

No. 6173

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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*1682*

GRACE LOW,

Appellant,

vs.

SUTHERLIN, BARRY & COMPANY, INC., and  
JOHN E. SUTHERLIN,

Appellees.

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Transcript of Record.

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Upon Appeal from the United States District Court for the Southern  
District of California, Central Division.

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Filed

JUN 23 1930

PAUL P. O'BRIEN,  
CLERK



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## INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

	PAGE
Affidavit of L. R. Martineau, Jr., dated March 21, 1929 .....	113
Affidavit of Ewell D. Moore Contra to Affidavit of L. R. Martineau.....	115
Assignment of Errors.....	161
Citation on Appeal.....	2
Clerk's Certificate .....	175
Clerk's Certificate to Judgment, and to Judgment Roll.....	159
Complaint (In Damages).....	3
Demurrer of John E. Sutherlin, and Points and Authorities in Support Thereof.....	111
Demurrer of John E. Sutherlin to First Amended Complaint, and Points and Authorities in Support Thereof .....	149
Demurrer of Sutherlin, Barry & Company, Inc.....	109
Demurrer of Sutherlin, Barry & Company, Inc. to First Amended Complaint, and Points and Authorities in Support Thereof .....	141
First Amended Complaint (in Damages).....	117
Judgment of Dismissal of Cause.....	158
Minutes of the Court—March 29, 1929—Order Sustaining Demurrer of Defendants, and Allowing Plaintiff to Amend Complaint.....	116
Minutes of the Court—October 14, 1929—Order Sustaining General Demurrer of Sutherlin, Barry & Company, Inc., and General Demurrer of John E. Sutherlin, and Dismissing Action.....	157

	PAGE
Names and Addresses of Attorneys.....	1
Notice of Motion to Strike Plaintiff's Amended Complaint, and Points and Authorities in Support Thereof .....	156
Order Allowing Appeal, and Fixing Bond.....	160
Original Summons and Return of Service.....	107
Petition for Appeal.....	160
Praecipe for Record on Appeal.....	173
Stipulation as to Omissions From Transcript on Appeal, and Stipulation as to Substance of the Issues Presented in Actions.....	162
Stipulation for Diminution of Record on Appeal.....	173
Stipulation of Counsel That the Exhibits Attached to Original Complaint Need Not Be Attached to First Amended Complaint .....	140
Undertaking on Appeal.....	171

**Names and Addresses of Attorneys.**

For Appellant :

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Title Insurance Building ;

D. A. KNAPP, Esq.,  
Subway Terminal Building.

For Appellees :

JOSEPH L. LEWINSON, Esq.,  
Bartlett Building, Los Angeles, California ;

L. R. MARTINEAU, Esq.,  
Roosevelt Building.

United States of America, ss.

To SUTHERLIN BARRY & COMPANY, INC., and  
JOHN E. SUTHERLIN, defendants: Greeting:

You are hereby cited and adminished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 8th day of February, A. D. 1930, pursuant to an order allowing an appeal filed and entered in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain suit, being No. 3324-M, wherein Grace E. Low is plaintiff and you are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said appellant as in the said order mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM P. JAMES  
United States District Judge for the Southern  
District of California, this 9th day of January,  
A. D. 1930, and of the Independence of the  
United States, the one hundred and fifty-fourth

Wm. P. James

U. S. District Judge for the Southern  
District of California.

[Endorsed]: Copy received Jan 10, 1930 Joseph L.  
Lewinson L. R. Martineau Jr Attorneys for defendants  
Filed Jan 11 1930 R. S. Zimmerman, Clerk By M. L.  
Gaines Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

GRACE E. LOW,	:	
	Plaintiff,	:
	:	:
	:	3324 M
-vs-	:	COMPLAINT
SUTHERLIN BARRY & COM-	:	(In Damages)
PANY, INC., and JOHN E.	:	
SUTHERLIN,	:	
	:	
	Defendants.	:
. . . . .	:	

Plaintiff complains, and for cause of action against the defendants alleges:

I.

That jurisdiction of this case arises and is conferred on this Honorable Court by reason of the diversity of citizenship of the parties hereto. That the plaintiff Grace E. Low, is a citizen of the State of California and a resident of the County of Los Angeles; that the defendant John E. Sutherlin, is a citizen of the State of Louisiana, and the defendant Sutherlin Barry & Company Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana and authorized to do and doing business in the State of California.

II.

That on and prior to the 29th day of June 1925, plaintiff was the owner in fee of certain real property, one parcel of which was situated in the City of Los Angeles, and one of which was situated in the City of Venice, both in the County of Los Angeles, State of California; the

property located in Los Angeles being described as follows:

That portion of Lots 12, 13 and 14, in Block 108, of Bellevue Terract Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 2, page 585, Miscellaneous Records of said County, described as follows:

Beginning at a point in the Northerly line of Fifth Street, distant 65 feet Easterly from its intersection with the Easterly line of Hope Street; thence Easterly along said line of Fifth Street, 85 feet to its intersection with the Westerly line of a 12 foot alley (so-called); thence along said Westerly line, Northerly and parallel with the Easterly line of said Lots 12, 13 and 14, 142 feet; thence Westerly parallel with the Northerly line of Fifth Street, 85 feet; thence Southerly 142 feet to the point of beginning;

Together with the improvements thereon consisting of a six-story and full basement, Class "A" reinforced concrete apartment hotel in good repair, having 212 rooms sub-divided as follows:

Twelve (12) double apartments consisting of living room and dining room, each equipped with double disappearing beds, kitchen and bath; seventy-five (75) single apartments consisting of combination living and dining room containing one double disappearing bed; kitchen and bath; and seven (7) transient hotel rooms;

The property located in Venice being described as follows:

Lots "P" and "R" of Venice of America, in the City of Venice, County of Los Angeles, State of California, as per map recorded in Book 6, Pages 126 and 127 of Maps, in the office of the County Recorder of said County,

which property consists of approximately three acres of land, and on which are located twenty-seven (27) single cottages, three (3) double cottages, one (1) store and a garage of fourteen (14) stalls, all being of frame construction and in good state of repair;

Said property first above described is sometimes hereinafter referred to as the "Engstrum Property", and the property located in Venice is sometimes hereinafter referred to as the "Venice Property".

### III.

That at all times herein mentioned defendant, Sutherlin Barry & Company, Inc., was, and still is, a corporation engaged in the business of financing, dealing in and selling investment bonds and underwriting issues of the same, and that defendant John E. Sutherlin at all times herein mentioned was and still is, the president and manager thereof and the principal stockholder therein, and as such carried out all of the acts and things herein complained of for and on behalf of said defendant corporation.

### IV.

That prior to the 29th day of June 1925, said defendants by and through said defendant John E. Sutherlin, with the intent and purpose of developing and perfecting a scheme whereby plaintiff would be wrongfully deprived of her said property and the whole thereof by defendants, without any consideration whatsoever, did then begin and thereafter continue a series of steps hereafter set forth in the order and effect thereof as follows:

That, as the first step in the development of said scheme aforesaid, said defendants proposed to plaintiff in general terms a plan for funding the several obligations then and there existing against plaintiff, in which said plan defend-



ant Sutherlin, Barry & Company Inc., would take up and pay off all the then existing obligations against plaintiff's said Engstrum property, and in consideration therefor would cause bonds to be issued under a Trust Indenture and sold to defendant Sutherlin, Barry & Company Inc., in the amount that might be found necessary to relieve plaintiff from every then existing obligation against said Engstrum property, save and except the amount of bonds issued under said Trust Indenture, said bonds under said Trust Indenture to be secured by all of plaintiff's said Engstrum property herein described, and to bear interest at Seven Percent per annum; said bonds to be payable as to both principal and interest in such amounts and at such periods of time over a term of years as plaintiff could safely undertake in full view of the actual and potential income of her said Engstrum property. And to that end defendants proposed to plaintiff they would utilize their wide and varied financial experience to prepare a careful and conservative "set-up" upon which future negotiations plaintiff might safely act in the premises.

#### VI.

That plaintiff was without experience as to such matters and so stated to defendants, which fact defendants then and there well knew.

#### VII.

That, as a second step in developing said scheme aforesaid, defendants by and through defendant John E. Sutherlin, did prepare and exhibit to plaintiff a plan commonly called in the financial business a "set-up", containing on the one hand the actual and potential income of plaintiff's said Engstrum property projected over a term of years, and purporting to contain on the other hand all the



charges, expenses, fees and costs, as well as the payments of interest and amortization payments to retire said bonds, over a term of fifteen years from the date thereof, all of which purported to show to plaintiff that she could safely enter into said transaction and carry and pay all of the obligations she would assume under the said "set-up" so proposed by defendants; that then and thereupon and in furtherance thereof, defendants, by and through defendant John E. Sutherlin, falsely and fraudulently represented to plaintiff that by reason of the long experience of defendants in the finance and bond business that they, the defendants, could and did guarantee to plaintiff the truth and accuracy of the said "set-up" and particularly that it contained all the charges, expenses, fees, interest, payments and costs plaintiff would be called upon to bear and to pay in said transaction; that said defendants then and there well knew that in truth and in fact there would be charges and expenses against plaintiff in said proposed transaction other than, and in addition to the charges, expenses, fees, costs, interest and payments which said defendants had included in said "set-up" prepared by them and exhibited to plaintiff as aforesaid; that defendants, by and through said defendant John E. Sutherlin, made said statements to plaintiff with the intent and for the purpose of deceiving and misleading plaintiff and inducing her to enter into the said transaction, and plaintiff in reliance thereon thereupon agreed to continue said negotiations with defendants on the basis of said representation and said "set-up".

#### VIII.

That, as the third step in the development of said scheme, defendants on or about April 22, 1925, prepared

and presented to plaintiff a writing which in form purported to be a proposal or offer by plaintiff to defendant Sutherlin, Barry & Company, Inc., to fund her several obligations against said Engstrum property, and to issue and sell to said defendant Sutherlin, Barry & Company Inc., First Mortgage Seven Percent Bonds secured by a Trust Indenture, covering plaintiff's said Engstrum property; and then and there defendants, by and through said defendant John E. Sutherlin, falsely and fraudulently stated to plaintiff that the said writing in its full effect contained all of the oral proposals first submitted by defendants to plaintiff as aforesaid, and in its full effect contained the substance and purport of the said "set-up" as to the said Engstrum property; that defendants made said statements to plaintiff knowing them to be false, with the intent and purpose of deceiving and misleading plaintiff and inducing her to execute the said writing, and knowing that plaintiff was ignorant of the true nature and effect of the statements in said purported proposal contained; that plaintiff relied upon defendants oral representations aforesaid and executed and delivered to defendants on said date said writing, a copy of which is attached hereto, made a part hereof and marked Exhibit "A"; that immediately thereafter, plaintiff, in order to carry out her part of said transaction, incurred large expenses by virtue of defendants' said representations and of said writing, Exhibit "A", and to meet which exhausted her financial resources, which defendants then and there knew would result therefrom, and said expenses so incurred left plaintiff helpless to resist any further demands that might be made upon her in connection therewith, a fact well known to defendants, and by them calculated as a means to the ends hereinbefore set forth.

## IX.

That, thereafter, and as the fourth step in further developing said scheme as aforesaid and in conversations between plaintiff and defendant John E. Sutherlin for and in behalf of defendant Sutherlin, Barry & Company, Inc., it was orally agreed that the said transaction under Exhibit "A" should be enlarged and extended to include plaintiff's said Venice real property, herein described, under the same terms and conditions set forth in said "set-up" and in said proposal of April 22, 1925, Exhibit "A", save and except as to the amount of the bonds to be issued and the interest and amortization payments arising therefrom;

That thereafter and on the 29th day of June 1925, and subsequent to the incurring of heavy costs, expenses, charges and fees by plaintiff, as aforesaid, including the costs, expenses, charges and fees incurred by plaintiff incident to the inclusion of the said Venice property, as aforesaid, defendants, contrary to their express promises and representations to plaintiff as aforesaid, suddenly and on June 29, 1925, demanded of plaintiff the payment of the sum of \$5900.00 in addition to and in excess of the sum of all other charges, costs, fees, expenses, interest and payments theretofore provided to be paid by her under said "set-up" and said proposal of April 22, 1925, Exhibit "A"; that upon plaintiff's protests against defendants' said demand for said additional sum, defendants, by and through defendant John E. Sutherlin, stated to plaintiff that unless she then and there agreed to pay said \$5900.00 so demanded, defendants would immediately withdraw from said transaction and all the expenses, charges, and fees theretofore incurred by plaintiff as aforesaid, would be upon her shoulders; that by reason of said demand of

defendants and the said large expenses, charges and fees theretofore incurred as aforesaid, plaintiff was placed in a desperate financial situation, and in consequence thereof was forced to, and did, accede to defendants' demands and agreed to pay defendants said sum of \$5900.00, and then and there executed an agreement to pay said sum, which said agreement was then and there prepared and presented to plaintiff by defendants by and through defendant John E. Sutherlin, a copy of which agreement is attached hereto, made a part hereof and marked Exhibit "B". That thereupon and on said June 29, 1925, defendants, by and through defendant John E. Sutherlin, presented to plaintiff a further proposal, previously prepared by said defendants, enlarging and extending said proposal of April 22, 1925, to include plaintiff's said Venice real property as well as her said Engstrum property and providing for a Trust Indenture and the issuance of bonds thereunder in the sum of \$360,000.00, which plaintiff then and there executed and delivered to defendants, a copy of which is attached hereto, made a part hereof, and marked Exhibit "C".

#### X.

That prior to executing the said second proposal of June 29, 1925, (Exhibit "C") as aforesaid, and on said date plaintiff called the attention of defendants and particularly of defendant John E. Sutherlin, to the provisions therein contained as to the insurance required to be placed and paid for by plaintiff upon her said Engstrum and Venice properties herein described, and stated to said defendants that said insurance requirements therein did not appear to be in accordance with the said "set-up" as prepared by them and exhibited to plaintiff as aforesaid; that there-

upon and in response thereto, defendants, by and through said defendant John E. Sutherlin, falsely and fraudulently stated to plaintiff that the insurance then in force and paid for by plaintiff upon all of her said properties, would be sufficient to meet the defendants' requirements in the premises and that there would be no necessity for further insurance thereon except in a small amount, the cost of which would be provided for out of the excess from said bond issue over and above all the other costs, expenses, fees and payments provided for in said Trust Indenture, and that said additional costs for said additional insurance would be merely nominal and would not work a hardship upon plaintiff, and that by reason of the fact that said expense for said additional insurance would be merely nominal, plaintiff would not only be able to pay from said bond sale proceeds said insurance, but that plaintiff would also receive a substantial balance from the proceeds of the sale of said bonds to be issued under said Trust Indenture, from which said balance plaintiff could pay all of the charges and expenses, and establish a reserve to meet the interest payments as they became due upon said bonds; that plaintiff in reliance upon said statements and representations of defendants as aforesaid, was induced to and did execute the said proposal of June 29, 1925, (Exhibit "C") and did proceed to the further consummation of said transaction;

That notwithstanding said representations of defendants to plaintiff as aforesaid, defendants then and there secretly connived to, and thereafter did, saddle upon plaintiff additional insurance charges in the amount of \$3,275.95; that there was no balance due plaintiff from the sale of said bonds with which to pay said additional insur-



ance charges and that said defendants and each of them, at all times herein mentioned well knew that there would be no such balance, and well knew that said charges for said additional insurance could not be paid by plaintiff from any balance from the sale of said bonds, and well knew that said charges for said additional insurance would go far toward creating a default by plaintiff by reason of which defendants could secure the sale of said properties to said defendant Sutherlin, Barry & Company, Inc; that said representations as aforesaid were in direct contravention to the representations theretofore made by defendants to plaintiff, as aforesaid.

#### XI.

That thereafter, and as the fifth step in said scheme aforesaid, defendants prepared and by through defendant John E. Sutherlin, submitted to plaintiff a form of Trust Indenture covering all of plaintiff's said real property herein described, and at or about the same time prepared and presented to plaintiff, and plaintiff executed, an application to the Corporation Commissioner of the State of California for a permit to issue and sell to defendant Sutherlin, Barry & Company Inc., the bonds provided for under said Trust Indenture in the sum of \$360,000, and defendants thereupon placed the entire transaction in escrow with the Citizens Trust and Savings Bank of Los Angeles, California, the Trustee named in said Trust Indenture. That thereafter, and upon August 12, 1925, a permit was issued by said Corporation Commissioner authorizing plaintiff to sell and issue to defendant Sutherlin, Barry & Company Inc., said bonds in said amount of \$360,000 at ninety cents on the dollar, all subject to and under the conditions of the said Trust Indenture, a copy

of which is attached hereto, made a part hereof and marked Exhibit "D".

That the said application for said permit to issue and sell said bonds was prepared by defendant and that the entire proceedings thereto pertaining were carried on by said defendants, all without knowledge of plaintiff as to the details or practical purport thereof, and that said defendants at all times herein mentioned well knew that plaintiff did not have knowledge of such details or practical purport and particularly that she had no comprehension or understanding of the ultimate effect of said permit, to-wit: that the sale of said bonds thereunder would result in a bonus to defendant Sutherlin, Barry & Company, Inc., in the sum of \$36,000 and that plaintiff would be deprived of said sum from the proceeds of the sale of said bonds.

## XII.

That, as the sixth step in the development of said scheme aforesaid, and on the 23rd. day of September 1925, and at the time of the closing of said escrow at said Citizens Trust & Savings Bank, and at a time when the said Trustee had notified the parties hereto that there would be a balance of but Fifty Dollars in favor of plaintiff from the proceeds of the sale of said bonds to defendant Sutherlin, Barry & Company, Inc., after meeting the charges, costs, expenses and fees in said transaction incurred (the Trustee not referring however, to the insurance charges set up in paragraph X. herein) said defendants, by and through defendant John E. Sutherlin, suddenly demanded of plaintiff the immediate and unconditional payment of the said sum of \$5,900.00, referred to in paragraph IX. hereinabove, and defendants then and there by and through defendant John E. Sutherlin, declared that unless said charge

of \$5,900.00 was immediately settled by plaintiff in the manner and form by them demanded, they, the defendants, would refuse to go further in said transaction and would leave to plaintiff the payment of all the charges, expenses and costs theretofore provided for in said proposal of June 29, 1925, which plaintiff had incurred in good faith, and any and all other items of expense charged or chargeable to plaintiff in the premises; that the manner and form of settlement of said charge of \$5,900.00 thus demanded by defendants was as follows: that plaintiff execute two promissory notes in the sum of \$2,950.00 each, payable in ninety and one hundred and twenty days respectively with interest thereon at Seven Percent and Six Percent respectively, per annum; and plaintiff, solely by reason of the facts hereinabove set forth, thereupon did execute and deliver said two promissory notes to defendants.

That at all times hereinbefore mentioned defendants intended said charges of said \$5,900.00 to be made against plaintiff, and said charges were so made against plaintiff, in deliberate contravention of the promises and representations of defendants to plaintiff made as hereinbefore set forth.

That thereafter defendant Sutherlin, Barry & Company, Inc., sold one of said promissory notes to a purported innocent purchaser who immediately demanded payment thereof and sued plaintiff thereon, and garnisheed a large number of plaintiff's tenants occupying said Engstrum property, thereby resulting in the vacating by such persons of plaintiff's said premises and the consequent and continuing curtailment of plaintiff's income therefrom;



That at all times herein mentioned defendants intended, designed and contemplated the results of their aforesaid acts, to-wit: that plaintiff would be deprived of a large part of her income from her said Engstrum property and by reason thereof would default in the payment of the charges and expenses under said Trust Indenture and the interest on said bonds, and thereby would provide defendants with legal excuse to declare a default thereunder and to demand that said Trustee sell all of plaintiff's said properties under said Trust Indenture, in order that defendant Sutherlin Barry & Company Inc., might buy said properties at said sale and secure the same to themselves without consideration to plaintiff for her interest therein.

That said results to plaintiff did in fact follow the aforesaid acts of defendants and plaintiff was in fact thereby deprived of a large part of her income theretofore received from said Engstrum property, and plaintiff was in fact thereby prevented from paying the charges, costs and expenses placed against her by defendants in connection with said transaction aforesaid, and was in fact thereby prevented from paying the interest on said bonds as and when the same became due, and plaintiff, as a consequence thereof, was thereby and thereafter deprived of her said real property and the whole thereof, as the same existed in her prior to the said 29th day of June 1925.

### XIII.

That, as the seventh step in the aforesaid scheme, defendant Sutherlin Barry & Company Inc., on the 23rd. day of December 1925, notified plaintiff in writing that unless certain insurance premiums upon the additional insurance defendants required plaintiff to place upon her said property as aforesaid, were not immediately paid by plaintiff

by way of reimbursement to the said Citizens Trust & Savings Bank, the Trustee, then the said defendant Sutherlin Barry & Company Inc., would at once elect to request said Trustee to declare the entire principal sum of said bonds, to-wit, \$360,000, due and payable, and would take further steps appropriate in the premises; that said defendants and each of them well knew at the time of making said demand upon plaintiff, and well knew from the beginning of said transaction, that their said manipulations of the entire transaction affecting plaintiff's said properties under said Trust Indenture had made it impossible for plaintiff to immediately pay said insurance charges or to immediately pay the other charges, costs and expenses placed against plaintiff as aforesaid, or to immediately pay the interest then accruing on said bonds;

That thereafter and on March 1st. 1926, the said Trustee, pursuant to the request of said defendant Sutherlin Barry & Company Inc., served written notice upon plaintiff declaring plaintiff in default under the terms of said Trust Indenture, and further declaring the entire principal of said bonds, to-wit, \$360,000 immediately due and payable.

#### XIV.

That thereafter, and as the eighth step in furtherance of said scheme, defendants prepared a form of proposal in writing from plaintiff to defendant Sutherlin Barry & Company Inc., a copy of which is attached hereto and marked Exhibit "E"; which said proposal defendant John E. Sutherlin presented to plaintiff on June 4th, 1926, and plaintiff, in reliance upon the statements of said defendant John E. Sutherlin as to the purport and effect thereof upon plaintiff's rights and interest in said properties, and

induced wholly by said statements, did thereupon execute and deliver to defendants said proposal on said date, and defendant John E. Sutherlin accepted the same for and on behalf of defendant Sutherlin Barry & Company Inc. That said statements of defendant John E. Sutherlin made to plaintiff on said date and prior to her signing said proposal were :

That the purport and effect of said instrument was: that if plaintiff would place a manager to be named by defendants in charge of all of said real, and her personal property hereinafter set forth, and surrender the same to the use of defendants, and also would surrender to defendants all of the income therefrom, and cause all of her said personal property in or upon said real property to be subjected to the same general lien created by said Trust Indenture, defendants would as consideration therefor credit the said income to the payment requirements under the said Trust Indenture, and would cause the Trustee to postpone the sale of said real property then pending to October 5th, 1926, and also would cause the said declaration of said Trustee accelerating the maturity of said bonds to be rescinded and thus restore the said real property to its former status under said Trust Indenture, provided, plaintiff should pay to the said Trustee prior to October 5th, 1926, all of the sums necessary to cure the default theretofore declared to exist in said Trustee's notice, together with all charges, costs and expenses accrued at the date of such payment.

That plaintiff thereafter did all and singular the things by defendants stated as aforesaid that she would be required to do in order to secure a postponement of the sale of her said real property, including the placing of defend-

ants' manager in charge of her said personal and real property, and surrendering the income therefrom to defendants; but defendants thereafter in direct contravention of their said statements, representations and promises, failed and refused to cause the said Trustee to postpone the sale of said real property to October 5th, 1926, and failed and refused to cause the Trustee to rescind its said declaration accelerating the maturity of the entire principal of said bonds and to restore said real property to the status existing prior to said declaration of default under said Trust Indenture, all in spite of the fact that plaintiff upon the 12th day of August 1926, procured and presented to defendants a person ready, able and willing then and there and on said date, to pay to said Trustee all charges, costs, expenses and interest declared by said Trustee to be due from plaintiff under said Trust Indenture or otherwise charged against her in the premises;

That at the time said defendants by and through defendant John E. Sutherlin made said false and fraudulent representations to plaintiff, to-wit, on June 4th, 1926, defendants did not intend to postpone said Trustee's sale to October 5th, 1926, in order to permit plaintiff to obtain the money necessary to cure her said default, and did not intend to cause the Trustee to rescind its said declaration accelerating the maturity of the entire principal of said bonds, and did not intend to cause said Trust Indenture to be restored to its original force and effect; and defendants and each of them well knew said plaintiff relied upon said false and fraudulent statements and representations of defendants as aforesaid; that plaintiff would not have surrendered the control of said real and personal property and the income therefrom to the manager and agent of

defendant Sutherlin Barry & Company Inc., as aforesaid, save and except in her said reliance thereon.

XV.

That at the time said defendants made said false and fraudulent statements and representations to plaintiff as aforesaid, to-wit, on June 4th, 1926, they, and each of them, well knew that in the event and upon the placing of the said manager of defendant Sutherlin Barry & Company Inc., in charge of plaintiff's said property and allowing him to collect and take the income therefrom for said defendant Sutherlin Barry & Company Inc., that plaintiff would thereafter be thwarted and prevented from receiving her customary and usual income therefrom and thereby would be prevented from paying her obligations under said Trust Indenture: and the defendants and each of them purposed and intended at the time they made said false and fraudulent representations that plaintiff should never again come into control of her said real and personal property; that defendant Sutherlin Barry & Company Inc., upon placing its said manager in control of plaintiff's said property and the income therefrom, so manipulated the same, including the income therefrom, that plaintiff was prevented from receiving her customary and usual income and plaintiff was to the degree of said decrease of income thereby prevented from paying her interest and other charges under said Trust Indenture;

That in truth and in fact said defendant Sutherlin Barry & Company Inc., ever since has held possession and control of all of plaintiff's said property, both real and personal, and still continues to hold the same against the will and without the consent of plaintiff and without right therein



or justification therefor, save and except as to such part thereof as they have, in violation of good faith and fair dealing in the premises sold, caused to be sold, or have otherwise disposed of, without paying any of the proceeds of said sale or sales to plaintiff, and without legal right or justification therefor in the premises.

That defendants, in utter disregard of their said agreement of June 4th, 1926, to postpone the sale of said real property to October 5th, 1926, as aforesaid, caused said sale to be postponed only to August 12th, 1926, and did then and there and on said last date mentioned, cause said real property to be sold by said Trustee to defendant Sutherlin Barry & Company Inc. That said sale was designed by said defendants to be held, and was in truth and in fact so held, without opposing bidders; that said defendants in utter violation of good faith and well knowing that the valuation of plaintiff's said real property as fixed in the appraisal caused to be made by defendant Sutherlin Barry & Company Inc., was in excess of \$650,000, caused said real property to be sold by said Trustee to defendant Sutherlin Barry & Company Inc., and defendant Sutherlin Barry & Company Inc. purchased said property at said sale for \$292,500. That defendant Sutherlin Barry & Company Inc. purchased said real property at said sale at said price of \$292,500 with the intent and for the purpose of thereafter, and at its convenience, filing suit and obtaining a deficiency judgment against plaintiff in the premises, and of executing such judgment upon said personal property and the whole thereof, to the end that said defendant Sutherlin Barry & Company Inc. might secure to itself said personal property without consideration to plaintiff therefor.

XVI.

That at all times hereinbefore mentioned plaintiff was the owner of all and singular the personal property in and upon the real property herein described, to-wit, the said Engstrum and said Venice properties; that said personal property consisted of complete household furniture, furnishings and equipment ordinarily required and used in the apartment house and hotel business; that said furniture, furnishings and equipment was of the reasonable actual value to plaintiff of the sum of \$60,000.

That defendant Sutherlin Barry & Company Inc., ever since taking possession and control of said real property and said personal property as aforesaid, has without right or authority exercised the rights of ownership therein and as plaintiff is informed and believes, and therefore alleges, has sold and otherwise disposed of said personal property and the whole thereof without the consent and against the will of plaintiff.

XVII.

That by reason of the said acts of defendants and each of them as aforesaid, plaintiff has been deprived of the use and occupancy of said properties, to-wit, the said Engstrum and Venice real properties, together with her said personal property thereon, and the income therefrom, from and since the said 4th day of June 1926; that said property, and the whole thereof, theretofore were used and utilized by plaintiff and would have continued to be so used by her, in carrying on her apartment house and hotel business; that plaintiff net income therefrom prior to said June 4th, 1926, was, and would have thereafter continued to be, the sum of \$50,000 per year; that by reason of said acts of defendants as aforesaid, and the said loss of plaintiff's

said net income therefrom as aforesaid, plaintiff suffered damages in the sum of \$125,000.00.

#### XVIII.

That plaintiff has heretofore demanded of defendants and each of them the return to plaintiff of said real and personal property and the whole thereof, or the value thereof, but defendants and each of them have ever refused and still refuse to return the same or any part thereof, and/or to pay to plaintiff the value or any part of the value thereof.

#### XIX.

That by reason of the said false and fraudulent promises and representations of defendants and each of them, and by reason of the said failure and refusal of defendants to carry out the said agreements as hereinbefore set forth, and by reason of the carrying out of their said general scheme to deprive plaintiff of her said real property in the manner aforesaid, plaintiff was thereby deprived of all of her interest in said real property as the same existed prior to said July 29th, 1925, all to her damage in the sum of \$750,000, less the sum of \$300,000 paid thereon by defendant Sutherlin Barry & Company, Inc., in behalf of plaintiff, or the net sum of \$450,000; together with the value of plaintiff's said personal property in the sum of \$60,000 as aforesaid, and the loss of the revenue from said property and the whole thereof as aforesaid, in the sum of \$125,000, or the total sum of \$635,000.

WHEREFORE, plaintiff prays judgment against the defendants and each of them in the sum of Six Hundred and Thirty-five Thousand (\$635,000) Dollars; for her costs of suit herein, and for such other, further and differ-



ent relief as to the Court may seem meet and equitable in the premises.

Ewell D. Moore  
and  
D. A. Knapp  
Attorneys for Plaintiff.

STATE OF CALIFORNIA, (   
 County of Los Angeles, ( ss. )

GRACE E. LOW, being by me first duly sworn, deposes and says: that she is the plaintiff in the above entitled action; that she has read the foregoing Complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

Grace E. Low

Subscribed and sworn to before me this 15 day of November 1928.

[Seal.]

Ivan G. McDaniel

Notary Public in and for the County of Los Angeles,  
State of California.

#### EXHIBIT "A."

THIS AGREEMENT made and entered into this 22nd day of April, 1925, by and between GRACE E. LOW and CHAS. H. LOW, her husband, Parties of the First Part, hereinafter called the "Owners" and SUTHERLIN, BARRY & COMPANY, INC., a corporation, Party of the Second Part, hereinafter called the "Purchaser."

WITNESSETH: that,

WHEREAS, the parties of the First Part are the Owners in fee simple of that certain property located in the City of Los Angeles, County of Los Angeles, State of California, particularly described as follows, to-wit:

WEly 85 ft. of NWly 150 ft. of Lots 12 and 13 and SWly 32 ft. of SEly 85 ft. of NWly 150 ft. of Lot 14, all in Block 108 of the Bellevue Terrace Tract as per Book 2, Page 585 of Miscellaneous Records of said Los Angeles County, excluding therefrom streets if any, subject to all easements, restrictions, reservations and servitudes, if any of record. Said premises being known as the Engstrum Arms Apartment Hotel, 623 West Fifth Street, in said City of Los Angeles.

together with improvements thereon consisting of a six-story and full basement "Class A" reinforced concrete apartment hotel having 212 rooms sub-divided as follows:

Twelve (12) double apartments consisting of living room and dining room, each equipped with double disappearing beds, kitchen and bath; 75 single apartments, each consisting of combination living and dining room containing one double disappearing bed, kitchen, and bath, and seven (7) transient hotel rooms.

In addition, the building contains a large ballroom on the Seventh Floor, store rooms and two (2) very large rooms in the basement suitable for commercial purposes which the Owners expect to rent at an income of Seven Thousand Dollars (\$7,000.00) per year, when, and if, a tunnel is constructed leading from the basement of said building to "Lower" Fifth Street, plans for which have been made.

Said building is equipped with a modern steam heating system and is in first class condition throughout, except that it needs certain minor repairs and other improvements such as painting the outside of the building and some inside redecorations which are necessary to bring the building and appearances back to first class condition, and

WHEREAS, the Owners believe and expect that the future operation of said apartment hotel building will conservatively yield net earnings of at least Sixty Thousand Dollars (\$60,000.00) a year, and

WHEREAS, the Owners propose and intend to create a bonded indebtedness in the aggregate principal amount of Two Hundred Ninety-five Thousand Dollars (\$295,000.00) to be represented by their individual bonds secured by a mortgage or trust deed upon said property, the net proceeds to be derived therefrom to be used for the purpose of paying existing indebtedness against said property and for such other purposes as are hereinafter recited, and

WHEREAS, the Purchaser desires to purchase all of said bonds upon the terms and conditions hereinafter specified.

NOW THEREFORE, in consideration of the premises and the sum of Ten Dollars (\$10.00) to each of the parties hereto in hand paid by the other, receipt whereof is hereby acknowledged, and the mutual covenants, promises and agreements herein contained, it is hereby agreed by and between the parties hereto as follows, to-wit:

First: The owners agree to immediately proceed to create and issue their individual First Mortgage Seven Per Cent Sinking Fund Gold Bonds of the aggregate par or face value of \$295,000.00, all of said bonds to be dated

as of the 15th day of May, 1925; to be in denominations satisfactory to the Purchaser and to bear interest at the rate of 7% per annum, payable semi-annually, and the principal of said bonds shall become due and payable as follows:

\$10,000.00 on the 15th day of May in the years 1927, 1928, 1929 and 1930;

\$15,000.00 on the 15th day of May in the years 1931, to 1939, both inclusive, and

\$120,000.00 on the 15th day of May, 1940.

Second: The Owners agree to sell to the Purchaser and the Purchaser agrees to buy all of said bonds of the aggregate par or face value of \$295,000.00, when the same have been duly issued by the Owners and are ready for delivery, as herein provided, and the Purchaser agrees to pay to the Owners therefor 90% of the par or face value of said bonds plus accrued interest to the date of delivery.

Third: It is agreed that all of said bonds shall be secured by a first mortgage or deed of trust upon all of the property hereinbefore particularly described; that they shall be in such denominations as the Purchaser may desire and that said mortgage or trust deed securing the same shall contain the following terms and conditions:

(a) That the interest on said bonds shall be due and payable on the 15th day of May and the 15th day of November in each year; principal and interest payable at the main office of Citizens Trust & Savings Bank, in the City of Los Angeles, State of California, which shall be the Trustee under said mortgage or deed of trust.

(b) Said bonds shall be called First Mortgage Seven Per Cent Serial Gold Bonds and a sinking fund shall be provided for by said mortgage or deed of trust in such a

manner that the Owners shall be required to make payment to the Trustee in lawful money of the United States, as and for such sinking fund, commencing on the first day of June, 1925, and continuing on the first day of each and every month thereafter until all of the principal and interest of said bonds shall have been paid in full, a sum equal to one-twelfth ( $1/12$ ) of the annual requirements for the payment of principal and interest on said bonds, and the Owners agree that the full amount necessary to meet any semi-annual installment of interest and the amount necessary to make payment of any of the principal of said bonds, shall be deposited with the Trustee not less than fifteen (15) days prior to the date upon which the same shall become due under the terms of said mortgage or deed of trust, and all such payments made to the Trustee shall bear interest at the rate of 2% per annum.

(c) All or any of said bonds may be redeemed on any interest payment date during the first five (5) years at 105% of the par value thereof plus accrued interest; during the second five years at 103½% of the par value thereof plus accrued interest, and thereafter at 102% of the par value thereof plus accrued interest, upon sixty (60) days notice to the Trustee in advance of the date fixed for such redemption, provided that all bonds shall be redeemed in their inverse numerical order, that is, the longest maturities first. The Owners also have the right to purchase bonds on the open market, at a price not exceeding the then redemption price, and for that purpose to use any sinking fund moneys available.

(d) The Owners shall, at all times, maintain fire and earthquake insurance in a reputable fire insurance company or companies, upon the property covered by said



mortgage or deed of trust, in an amount at least equal to the aggregate face amount of said bonds outstanding in case of fire, and in an amount equal to at least 50% thereof in the case of earthquake, all such policies to contain standard New York loss payable clauses and the Owners further agree to carry boiler insurance in the sum of \$50,000,00, public liability insurance in a like amount, and rental insurance for the full insurable rental value, at all times during which any of said bonds are issued and outstanding.

(e) The Owners shall pay both principal and interest of said bonds without deduction for any tax or taxes, assessments or other governmental charges which the Owners, or the Trustee may be required or permitted to pay thereon, or to retain therefrom, under any present or future law of the United States, or of any state, county, municipality or other governmental subdivision therein, not exceeding, however, in the case of Federal or other income taxes an aggregate of two per centum (2%) of the interest upon the principal of said bonds.

Fourth: It is further understood and agreed that the net proceeds derived from the sale of said bonds shall be used, first, for the purpose of paying in full the existing indebtedness against said property, and second, for the purpose of making those minor repairs and improvements hereinbefore mentioned, such as painting the outside of the building and re-decorating the interior so as to bring the appearances of the building back to first class condition, the balance to be delivered to the Owners.

Fifth: The mortgage and deed of trust securing said bonds shall be a first lien upon all of said property, excepting easements, rights of way of record and taxes due but

not delinquent, and the owners agree to furnish to the Purchaser a guarantee of title insurance in the sum of \$295,000.00, to be issued by a title company satisfactory to the Purchaser and showing said property to be vested in the Trustee, free and clear of all incumbrances, excepting easements and rights-of-way of record and taxes due but not delinquent.

Sixth: It is understood and agreed that the Owners shall do all within their power to secure the permit from the State Corporation Commissioner authorizing said bonds to be issued and sold and also the Certificate of the Superintendent of Banks of the State of California, certifying said bonds as legal for savings banks in said state, but should they fail in securing either said permit or said certification, without any fault upon their part, neither of said First Parties shall be held liable for any costs or damages resulting therefrom or from their failure to issue and deliver said bonds as herein agreed upon.

Seventh: The Owners agree to furnish to the Purchaser, upon the execution hereof, a certified statement showing the gross income and expense in the operating of said property for the year ending April 18th, 1925, which statement shall correctly show net income in excess of two and one half times the interest requirements on said proposed bonds, and it is further agreed that all special assessments levied, or which may be levied upon said property by City, County, State or Federal authorities, shall be paid in cash and not permitted to go to bond.

Eighth: It is mutually understood and agreed that the purchase of said bonds by the Purchaser shall depend upon the following, the failure of any one of which shall relieve and release the Purchaser of and from any obligations

upon its part to purchase said bonds as herein provided, viz:

(1) The said mortgage or deed of trust securing said bonds shall, in addition to those herein specified, contain the usual terms, covenants and conditions of mortgages and deeds of trust securing bonds of the kind and character herein provided, and any special provisions mutually agreed upon by the Owners and Purchasers.

(2) The issuance of a permit by the Commissioner of Corporations of the State of California, authorizing the owners to issue and sell their said bonds at the price and upon the terms herein provided.

(3) All proceedings in the creation of said bonds shall be subject to the approval of Messrs. Gibson, Dunn & Crutcher, whose approval of the legality of said issue of bonds and of their form and of the form of said mortgage or deed of trust securing the same, shall first be secured.

It is understood and agreed that the Purchaser shall be under no obligation to purchase said bonds as herein provided unless the Owners shall secure an appraisalment from an appraiser approved by the State Corporation Commissioner showing the property securing said bonds to be of the value of at least \$500,000.00, and if the Owners are unable to secure such appraisalment they shall not be held liable hereunder in damages or for the delivery of said bonds, but in such event this contract shall be of no force or effect.

Ninth: In the event said bonds are issued and sold as contemplated herein the Owners will pay the cost of (1) engraving said bonds, (2) guarantee of title, (3) recording said Trustee's fee, (4) Notary, escrow and attorney's fees, (5) fees of the Corporation Commissioner and State



Superintendent of Banks, and (6) fees for appraising said property.

Tenth: When the guarantee of title shall have been issued and the mortgage or deed of trust securing said bonds shall have been recorded, and all matters in connection with the issuance of said bonds completed, the Purchaser agrees to place on deposit with said Trustee, a sum of money equal to 90% of the par or face value of said bonds, plus accrued interest to the date of delivery, in cash, lawful money of the United States, and the Trustee shall disburse the same in accordance with the terms hereof.

IN WITNESS WHEREOF, the parties of the First Part have hereunto set their hands and the party of the second part has signed its corporate name and affixed its corporate seal hereto by its officers thereunto duly authorized, the day and year first hereinabove written.

GRACE E. LOW

CHAS. H. LOW

Parties of the First Part

SUTHERLIN, BARRY & COMPANY, INC.,

By JNO E SUTHERLIN

President

By.....

Secretary.

EXHIBIT "B"

Los Angeles, California, June 29, 1925.

Messrs. Sutherlin, Barry & Company, Inc.,

339 Carondelet Street,

New Orleans, Louisiana.

Gentlemen:—

Supplementing the contract entered into with you to-day for the sale of \$360,000.00 First Mortgage Bonds to you at the price of 90 and interest, beg to advise that the said

price of 90 and interest is intended to be the net cost of said bonds to you other than the bill for appraisals fee which you have paid.

In recognition of the commission due Messrs. S. E. Campbell & Company and Messrs. Lindsay, Willard & Lowe by you by reason of the original contract existing between us, I hereby agree to pay you the sum of Five Thousand Nine Hundred (\$5,900.00) Dollars concurrently with the delivery of the bonds to you, and you are hereby authorized to deduct the said Five Thousand Nine Hundred (\$5,900.00) Dollars from the proceeds of said bond issue at the time of payment, and this order shall be recognized by the Trustee at the time the bonds are delivered to you.

Very truly yours,

GRACE E. LOW

GEL:MB

EXHIBIT "C"

Messrs. Sutherlin, Barry & Company, Inc.,  
339 Carondelet Street  
New Orleans, Louisiana.

Gentlemen:—

The undersigned owns in fee that certain property located at 623 West Fifth Street in the City of Los Angeles, California, particularly described as follows:

WEly 85 ft. of NWly 150 ft. of Lots 12 and 13 and SWly 32 ft. of SEly 85 ft. of NWly 150 ft. of Lot 14, all in Block 108 of the Bellevue Terrace Tract as per Book 2, Page 585 of Miscellaneous Records of said Los Angeles County, excluding there from streets if any, subject to all easements restrictions, reservations and servitudes, if any

of record. Said premises being known as the Engstrum Arms Apartment Hotel, 623 West Fifth Street, in said City of Los Angeles.

Together with improvements thereon consisting of a six-story and full basement, Class "A" reinforced concrete apartment hotel in good repair, having 212 rooms subdivided as follows:

Twelve (12) double apartments consisting of living room and dining room, each equipped with double disappearing beds, kitchen and bath; Seventy-Five (75) single apartments consisting of combination living and dining room containing one double disappearing bed, kitchen and bath; and Seven (7) transient hotel rooms.

In addition thereto, the building contains a large ball-room located on the seventh floor; several store rooms and two very large rooms in the basement suitable for commercial purposes.

The said building is equipped with a modern steam heating system and is in first class condition throughout, except that it needs certain minor repairs and other improvements such as painting the outside of the building, and some inside redecorations, all of which can be accomplished in a first class manner at an expense not to exceed Fifteen Thousand (\$15,000.00) Dollars.

The undersigned likewise owns in fee that certain property located in the City of Venice, Los Angeles County, California, known as "United States Island," being Lots "P" and "R" recorded in Book 6, Page 125, Records of Los Angeles County, California, which property consists of approximately three acres of land, and on which are located twenty seven (27) single cottages, three (3) double cottages, one (1) store and a garage of fourteen (14)

stalls, all being of frame construction and in good state of repair.

For the purpose of funding and consolidating my several items of indebtedness, consisting of various mortgages on each of the above mentioned properties, unsecured notes, etc., I desire to issue and sell First Mortgage 7% Bonds in the aggregate principal sum of Three Hundred and Sixty Thousand (\$360,000) Dollars to be secured by each of the above mentioned properties, and hereby offer you the said bonds at the price of Ninety (90) and accrued interest, making the following representations and guarantees:

First: Said bonds shall be dated on or about August 1, 1925, and mature serially as follows:

\$12,000 Aug. 1, 1927	\$21,000 Aug. 1, 1934
14,000 Aug. 1, 1928	23,000 Aug. 1, 1935
15,000 Aug. 1, 1929	25,000 Aug. 1, 1936
16,000 Aug. 1, 1930	26,000 Aug. 1, 1937
17,000 Aug. 1, 1931	28,000 Aug. 1, 1938
18,000 Aug. 1, 1932	30,000 Aug. 1, 1939
20,000 Aug. 1, 1933	95,000 Aug. 1, 1940

Interest on these bonds is to be payable semi-annually, and both principal and interest shall be payable at the office of the Trustee which shall be the Citizens Trust & Savings Bank, Los Angeles, California, or at the office of the Trustee should some other bank be so designated. The bonds shall be issued in such denominations as you may desire, and bear interest at the rate of seven per centum (7%) per annum. The said bonds shall be redeemable on any interest date upon sixty (60) days notice to the Trustee at 105 and accrued interest during the years 1926 to 1930 inclusive; at 104 and accrued interest

during the years 1931 to 1935 inclusive; and 102 and accrued interest thereafter, but any bonds called for redemption shall be of the longest maturities in their inverse numerical order. The undersigned shall have the right to purchase bonds in the open market at a price not exceeding the then redemption price and, for that purpose, may use any sinking fund moneys available.

Second: Said bonds to be secured by closed first mortgage upon all the property herein described, but the Trust Indenture shall provide that the mortgage upon the Venice property may be released from said mortgage and/or Deed of Trust upon payment to the Trustee of the sum of Seventy Thousand (\$70,000) Dollars for the redemption of as many of said bonds as Seventy Thousand (\$70,000) Dollars will redeem at the then redemption price.

Third: You have heretofore been furnished with detailed appraisals on the Engstrum Arms Apartment Hotel by the Fidelity Appraisal Company and by James W. Long, Appraiser for the Corporation Commission, and appraisal on the Island property by James W. Long, both of said appraisals by Mr. Long having been accepted by the Corporation Commission. I will furnish you, at my expense, with a detailed appraisal by the Fidelity Appraisal Company of the Venice property and you are hereby authorized to contract for such appraisal, such fees or charges to be paid by me and deducted from the proceeds of the bond issue.

Fourth: I agree that I will promptly make applications to the Superintendent of Banks of the State of California, for his certificate, certifying said bonds as legal for investment Savings Banks in California and to pay the costs



therefor but the securing of such certificate shall not be obligatory; also to do all things necessary to secure the permit of the State Corporation Commission authorizing the issuance of these bonds.

Fifth: I further agree, that, prior to the payment by you of or concurrently with the delivery of the bond issue to you to deliver your bondholders policies of title insurance issued by the Title Insurance & Trust Company of Los Angeles in the sum of Fifty Thousand (\$50,000.00) Dollars on the Venice property and Three Hundred Thousand (\$300,000.00) Dollars on the Engstrum property.

Sixth: I further agree that all special assessments levied or which may be levied upon either of said properties by City, County, State or Federal authorities, during the life of this bond issue, shall be paid in cash and not permitted to go to bond or otherwise which would become a prior lien or obligation to this bond issue.

Seventh: The Mortgage and/or Deed of Trust covering such bonds shall, in addition to these herein specified, contain the usual terms, covenants and conditions of Mortgage and/or Deeds of Trust securing the bonds of the kind and character herein provided, and any special provisions mutually agreed upon. The said Mortgage and/or Deed of Trust shall provide that the borrower shall be required to make payment to the Trustee in lawful money of the United States on the 15th day of August 1925, and on the 15th day of each and every succeeding month while all or any part of the bonds are outstanding as and for a sinking fund for the redemption of said bonds and the interest maturing thereon; said monthly payments to be in a sum equal to one-twelfth ( $1/12$ ) of the annual requirement for payment of principal and interest on said



bonds; and that the full amount necessary to meet any installments of interest and the necessary amount to make payment of any of the principal of said bonds shall be deposited with the Trustee not less than fifteen (15) days prior to the date upon which same shall become due under the terms of said Mortgage and/or Deed of Trust.

Eighth: The said Mortgage and/or Deed of Trust shall provide that the borrower shall, at all times, during the life of this bond issue, maintain various forms of insurance for the benefit of the bondholders on each of said properties as follows:

ENGSTRUM ARMS APARTMENT HOTEL

(a) Fire insurance in a net amount of \$290,000, or in proportion thereto, as the bonds are retired;

(b) Earthquake insurance in an amount equal to, at least, 50% of the amount of the bonds outstanding;

(c) Boiler insurance in the sum of \$50,000; Public Liability Insurance in the sum of \$50,000;

(d) Workmen's Compensation or Employers' Liability Insurance for an amount fixed by law, but in no case less than \$25,000; and

(e) Rental insurance for the full insurable rental value.

VENICE PROPERTIES

(a) Fire Insurance in a net amount of \$70,000, or in proportion thereto, as the bonds are retired;

(b) Earthquake insurance in an amount equal to, at least, 50% of the amount of the insurable value;

(c) Workmen's Compensation or Employers Liability Insurance for an amount fixed by law; and

(d) Rental insurance for the full insurable rental value.

All Fire and Earthquake Insurance to Carry Standard New York Loss Payable Clauses; and all policies of insurance shall be delivered to the Trustee prior to or concurrently with the delivery of these bonds. Furthermore, all insurance shall be written with Companies of your selection and through Agents or Brokers whom you may designate.

Ninth: The said bond issue shall be payable both as to principal and interest without deduction for any tax or taxes, assessments or other governmental charges which the owner or the trustee may be required or permitted to pay thereon, or to retain therefrom, under any present or future law of the United States, or of any state, county, municipality, or other governmental subdivision therein, not exceeding, however, in the case of Federal or other income taxes an aggregate of two per centum (2%) of the interest upon the principal of said bonds.

Tenth: The Mortgage and/or Deed of Trust securing said bonds shall be a first lien upon all such property, excepting easements, rights of way of record and taxes due but not delinquent.

Eleventh: The income from each of these properties has been as follows:

Engstrum Arms Apartment Hotel

Average gross monthly income for the past	
eighteen months .....	\$6,500.00
Net .....	5,000.00

Venice Properties

Gross income for the past 31 months.....	965.00	per month
Net .....	725.00	“

Twelfth: All proceedings in the creation of said bonds shall be conducted by Messrs. O'Melveny, Millikin, Tuller

& Macneil, Attorneys of Los Angeles, California, whose approval of the legality of said bond issue, and the form of said Mortgage and/or Deed of Trust securing the same, shall be secured at my expense before you shall be required to accept delivery of said bonds.

Thirteenth: I agree to furnish suitable lithographed bonds and guaranty of title at my expense, and to pay recording and attorneys' fees, notary, escrow fees, fees of the Corporation Commission and State Superintendent of Banks and fees for appraising said property, except appraisal fees previously paid by you, together with all other usual and customary expenses in a bond issue of this character.

Fourteenth: All secured interest received at time bonds are delivered to you shall be deposited with Trustee to credit of Interest Account for payment of interest on said bonds.

Time is the essence of this contract and I agree to deliver said bonds to you not later than September 15th, 1925.

Agreement heretofore entered into is hereby cancelled by mutual consent.

GRACE E. LOW

Accepted June 29, 1925  
SUTHERLIN, BARRY & COMPANY INC.,  
By JNO E SUTHERLIN  
President.

EXHIBIT "D"

THIS INDENTURE made and entered into as of the 1st day of August, 1925, by and between GRACE E. LOW, residing at #271 South New Hampshire Street,

City of Los Angeles, County of Los Angeles, State of California (being hereinafter sometimes called the "Trustor") party of the first part, and CITIZENS TRUST AND SAVINGS BANK, a corporation organized and existing under the laws of the State of California, for the purpose among other things of holding and administering property in trust and having its office and principal place of business in the City of Los Angeles, County of Los Angeles, State of California (hereinafter called the "Trustee") party of the second part,

WITNESSETH:

WHEREAS, the Trustor desires that there be issued the bonds hereinafter mentioned aggregating Three hundred sixty thousand dollars (\$360,000) principal amount; designated as GRACE E. LOW PROPERTIES FIRST MORTGAGE SEVEN PER CENT SERIAL GOLD BONDS; that said bonds be of the number, denominations and maturities hereinafter set forth; that said bonds bear interest at the rate of seven percent (7%) per annum, payable semi-annually on the first days of February and August each year until paid; that both principal and interest be payable in gold coin of the United States of America of or equivalent to the present standard of weight and fineness; that the principal of and the interest on said bonds be payable at the main office of Citizens Trust and Savings Bank in the City of Los Angeles, County of Los Angeles, State of California, or at the main office of Canal Commercial Trust & Savings Bank in the City of New Orleans, State of Louisiana, at the option of the holders thereof; that all or any part of said bonds be subject to redemption, upon sixty (60) days' notice, upon any semi-annual interest payment date upon and by the

payment of the principal thereof and the interest due thereon, together with a premium of five per cent (5%) upon the principal thereof if such redemption be effected on or before August 1, 1930; a premium of four per cent (4%) upon such principal if such redemption be effected thereafter and on or before August 1, 1935, and a premium of two per cent (2%) upon such principal if such redemption be effected after August 1, 1935, and prior to maturity; that said bonds be issued, received and held subject to all and singular the terms of this indenture; and that said bonds and the coupons and trustee's certificate be substantially in the following form, to-wit:

(Form of Bond)

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA.

No..... \$.....

GRACE E. LOW PROPERTIES

First Mortgage Seven Per Cent Serial Gold Bond.

For Value Received Grace E. Low hereby promises to pay to the bearer hereof.....Dollars (\$.....) in gold coin of the United States of America of or equivalent to the present standard of weight and fineness, on the first day of August, 19....., together with interest thereon from the date hereof at the rate of seven per cent (7%) per annum, payable semi-annually in like gold coin on the first days of February and August of each year, in accordance with and on presentation and surrender of the interest coupons hereto attached as they severally become due. The principal hereof and the interest hereon is payable at the main office of Citizens Trust and Savings Bank, in the City of Los Angeles, State of California, or at the



main office of Canal Commercial Trust & Savings Bank, in the City of New Orleans, State of Louisiana, at the option of the holder. The principal hereof and the interest hereon are payable without deduction for any tax or taxes, assessments or other governmental charges which said Citizens Trust and Savings Bank, said Canal Commercial Trust & Savings Bank, or said Grace E. Low may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law or ordinance of the United States or of any state, county, municipality or other lawful taxing authority therein, not exceeding, however, in the case of federal or other income taxes an aggregate of two per cent (2%) of the interest upon said principal, and said Grace E. Low agrees to reimburse the holder of this bond, or of the coupons hereto attached, upon written demand being made on said Grace E. Low, or upon said Citizens Trust and Savings Bank or said Canal Commercial Trust & Savings Bank, as her agents, for any such taxes, assessments or charges which said holder may be required to pay unless and until said Grace E. Low, said Citizens Trust & Savings Bank or said Canal Commercial Trust & Savings Bank shall be required or permitted to pay, retain or deduct such taxes, assessments or charges.

This bond is one of a series of four hundred and one (401) First Mortgage Seven Per Cent Serial Gold Bonds, all of like date and tenor except the variations necessary to express their numbers, denominations and maturities, Bonds numbered M-1 to M-319 both inclusive, are of the denomination of One thousand dollars (\$1,000) each and bonds numbered D-1 to D-82, both inclusive, are of the denomination of Five hundred dollars (\$500) each. Said



bonds are due and payable serially on the first day of August of the following years, as follows: Bonds numbered M-1 to M-10, 1927; M-11 to M-21, 1928; M-22 to M-33, 1929; M-34 to M-46, 1930; M-47 to M-60, 1931; M-61 to M-75, 1932; D-1 to D-32, 1933; M-76 to M-91 1934; M-92 to M-108, 1935; M-109 to M-126, 1936; M-127 to M-145, 1937; M-146 to M-166, 1938; m-167 to M-189, 1939; M-190 to M-319, 1940; and D-33 to D-82, 1940. All of said bond numbers are inclusive.

All of said bonds are issued or are to be issued under and equally secured by and are subject to the terms and conditions of a mortgage or deed of trust of even date herewith executed and delivered by Grace E. Low to Citizens Trust and Savings Bank, as Trustee, to which mortgage or deed of trust reference is hereby made for a description of the property mortgaged, the nature and extent of the security and the rights of the holders of said bonds under the same and the terms and conditions under which said bonds are issued.

In case an event of default as defined in said mortgage or deed of trust shall occur, the principal of all of said bonds, including this, may become or be declared due and payable in the manner and with the effect provided in said mortgage or deed of trust. All or any part of said bonds may be redeemed and paid upon any interest payment date before maturity of the same, at the Main Office of Citizens Trust and Savings Bank in the City of Los Angeles upon and by the payment of the principal thereof and the interest due thereon, together with a premium of five per cent (5%) upon the principal thereof, if such redemption is effected on or before August 1, 1930; a premium of four per cent (4%) upon such principal if such redemp-

tion be effected thereafter and on or before August 1, 1935; and a premium of two per cent (2%) upon such principal if such redemption be effected after August 1, 1935 and prior to maturity. Such payment and redemption of said bonds shall be accomplished in the manner set forth in said mortgage or deed of trust, and in case the total issue of bonds secured by said mortgage or deed of trust is not called for redemption at any one time then the bonds of the longest maturity at the time outstanding shall be redeemed first and in effecting such redemption call shall be made for bonds in their inverse numerical order.

This bond shall not become valid or obligatory unless and until it shall have been authenticated by the certificate of the Trustee under said mortgage or deed of trust endorsed hereon.

IN WITNESS WHEREOF, GRACE E. LOW, at Los Angeles, California, has hereunto set her hand and seal and has caused the hereunto attached coupons to be authenticated by the facsimile of her signature thereon, as of the 1st day of August, 1925.

.....  
(Form of Interest Coupon)

No..... \$.....

On the first day of....., 19....., unless the bond hereinafter mentioned shall have been called for earlier redemption, on surrender of this coupon, Grace E. Low promises to pay to bearer at the Main office of Citizens Trust and Savings Bank, Los Angeles, California, or at the option of the holder, at the Main Office of Canal Commercial Trust & Savings Bank, in the City of New Orleans, State of Louisiana, .....Dollars

(\$.....) in gold coin of the United States without deduction for taxes except as specified in the bond hereinafter mentioned, being six (6) months' interest then due on Grace E. Low Properties First Mortgage Seven Per Cent Serial Bold Bond No.....

TRUSTEE'S CERTIFICATE

This is to certify that this bond is one of the bonds described in the within mentioned mortgage or deed of trust dated August 1, 1925, and executed by Grace E. Low, to the undersigned as Trustee.

CITIZENS TRUST AND SAVINGS BANK

By

.....  
Assistant Trust Officer.

AND WHEREAS, the Commissioner of Corporations of the State of California has issued his permit authorizing the issuance and sale of each of said bonds, and all the prerequisite steps and proceedings, acts and things essential to the proper, due and legal authorization of said bonds and of this indenture have been taken by the proper bodies, boards, officers and persons and in due and in proper form, time and manner;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to secure the payment of the principal and interest of all of the bonds at any time issued and outstanding under this indenture, according to their tenor, purport and effect, and to secure the performance and observance of all the covenants, agreements and conditions herein contained, and to declare the terms and conditions upon which said bonds are issued, received and held, and for and in consideration of the premises and of the pur-

chase and acceptance of said bonds by the holders thereof and of the sum of ten dollars (\$10.00) in hand duly paid to the Trustor by the Trustee upon the execution and delivery of these presents, the receipt of which is hereby acknowledged, GRACE E. LOW, party of the first part hereto, has granted, bargained, sold, assigned, transferred, conveyed, confirmed, mortgaged, pledged and hypothecated, and by these presents does grant, bargain, sell, *sell*, assign, transfer, convey, confirm, mortgage, pledge and hypothecate unto CITIZENS TRUST AND SAVINGS BANK, the party of the second part hereto, as Trustee, and to its several successors in the trust hereby created, those certain parcels of real property situated in the County of Los Angeles, State of California, described as follows, to-wit:

PARCEL 1. "Engstrum Apartment Property."

That portion of Lots 12, 13 and 14 in Block 108 of Bellevue Terrace Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 2, Page 585, Miscellaneous Records of said County, described as follows:

Beginning at a point in the Northerly line of Fifth Street, distant 65 feet Easterly from its intersection with the Easterly line of Hope Street; thence Easterly along said line of Fifth Street, 85 feet to its intersection with the Westerly line of a 12 foot alley (so called); thence along said Westerly line, Northerly and parallel with the Easterly line of said Lots 12, 13 and 14, 142 feet; thence Westerly parallel with the Northerly line of Fifth Street, 85 feet; thence Southerly 142 feet to the point of beginning.

PARCEL 2. "Venice Properties."

Lots "P" and "R" of Venice of America, in the City of Venice, County of Los Angeles, State of California, as per map recorded in Book 6, Pages 126 and 127 of Maps, in the office of the County Recorder of said County.

TOGETHER with any and all buildings, improvements and appurtenances now standing, or at any time hereafter constructed or placed upon said land or any part thereof, including wall beds all screens, steam heating, plumbing ventilating gas and electric light fixtures, elevators and fittings, and machinery, appliances, apparatus and fittings and fixtures of every kind in any building or buildings now or hereafter standing on said premises, or any part thereof, and the reversion and reversions, remainder and remainders, in and to said premises, and each and every part thereof, and together with all the rents, issues and profits thereof (which are specifically assigned), and together with all and singular the tenements, hereditaments, easements, appurtenances and appendages to said estate, and property belonging or in any wise appertaining, and all the estate, right, title, interest, claim or demand whatsoever of the Trustor, either in law or in equity, either in possession or expectancy of, in and to the above described land and estate.

TO HAVE AND TO HOLD, all and singular, the said premises and properties, and also any and all additional premises and properties that by virtue of any provision hereof or by any indenture supplemental hereto hereafter shall become subject to this indenture, to the Trustee, its successors and assigns, forever.

BUT IN TRUST, NEVERTHELESS, under and subject to the provisions and conditions hereinafter set forth, for the equal and proportionate security of all present and



future holders of the bonds and coupons issued and to be issued hereunder, and to secure the payment of such bonds and coupons and to secure the performance and observance of and compliance with each and all of the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of any one bond or coupon over any other bond or coupon by reason of priority in the issue, sale or negotiation thereof, or by reason of any other cause; so that every bond and coupon issued hereunder shall have the same right, lien and privilege under and by virtue of his indenture, and so that the principal and interest of every such bond subject to the terms hereof, shall be equally and proportionately secured hereby as if all had been duly issued, sold or negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of this indenture shall take effect upon the date of the execution and delivery hereof without regard to the time of actual issue, sale or negotiaiton of said bonds, and as though upon such date all such bonds were actually issued, sold and delivered to and were in the hands of the holders thereof for value.

AND IT IS HEREBY COVENATED AND DECLARED, that all the bonds secured hereby and the coupons thereon are to be issued, certified and delivered, and that the trust estate is to be held by the Trustee subject to the covenants, conditions, uses and trusts hereinafter set forth as follows, to-wit:

#### ARTICLE I.

##### EXECUTION, MATURITY, FORM OF BONDS

Section 1. The bonds issued hereunder, together with interest coupons appertaining thereto, and the Trustee's certificate endorsed thereon, shall be substantially in the



form and of the tenor and purport hereinbefore recited and shall be known as the Grace E. Low Properties First Mortgage Seven Per Cent Serial Gold Bonds.

Section 2. The aggregate principal sum of all bonds which may be issued and outstanding under and secured by this indenture shall at no time exceed the sum of Three hundred sixty thousand dollars (\$360,000). Said bonds shall be Four hundred and one (401) in number and all of like date and tenor except the variations necessary to express their numbers, denominations and maturities. Bonds numbered M-1 to M-319, both inclusive, are of the denomination of One thousand dollars (\$1,000) each and bonds numbered D-1 to D-82, both inclusive, are of the denomination of Five hundred dollars (\$500) each. Said bonds are due and payable serially on the first day of August of the following years, as follows: Bonds numbered M-1 to M-10, 1927; M-11 to M-21, 1928; M-22 to M-33, 1929; M-34 to M-46, 1930; M-47 to M-60, 1931; M-61 to M-75, 1932; D-1 to D-32, 1933; M-76 to M-91, 1934; M-92 to M-108, 1935; M-109 to M-126, 1936; M-127 to M-145, 1937; M-146 to M-166, 1938; M-167 to M-189, 1939, M-190 to M-319, 1940; and D-33 to D-82, 1940. All of said bond numbers are inclusive.

Section 3. On each of said bonds there shall be the proper number of interest coupons of the face value of Thirty-five dollars (\$35.) each in the case of bonds of the denominations of One thousand Dollars (\$1,000) and of the face value of Seventeen dollars and fifty cents (\$17.50) each in the case of bonds of the denomination of Five hundred dollars (\$500). The first of said coupons shall be payable on February 1, 1926, and shall represent interest to that date from August 1st, 1925, and each suc-

cessive coupon shall be payable six (6) months after the date on which the preceding coupon is expressed to be payable and shall represent interest for the preceding six (6) months.

Section 4. The bonds shall pass by delivery.

Section 5. The Trustor and the Trustee may deem and treat the bearer of any bond and the bearer of any coupon for interest accruing on any bond, as the absolute owner of said bond or coupon for the purpose of receiving payment thereof, and for all other purposes whatsoever, whether said bond or coupon be overdue or not, and neither the Trustor nor the Trustee shall be affected by any notice to the contrary.

Section 6. In case any bond issued hereunder or the coupons thereto appertaining shall be mutilated, lost or destroyed, the Trustor in her discretion may execute, and thereupon the Trustee shall certify and deliver, a new bond and coupons of like tenor, date, serial number, amount and maturity, in exchange for and upon cancellation of the mutilated bond or coupons or in substitution for the bond or coupons so destroyed or lost. The applicant for such substituted bond or coupons shall furnish to the Trustor and the Trustee evidence of the destruction or loss of such outstanding bond or coupons, and of his ownership thereof, which evidence shall be satisfactory to her and the Trustee, in exercise of their absolute discretion, and said applicant shall also furnish indemnity satisfactory to them, in the exercise of like discretion. Such applicant also shall pay all necessary expenses incurred by the Trustor in making and issuing such substituted bond or coupon or coupons and also all expenses incurred by the Trustee in relation thereto.

Section 7. Said bonds shall be executed by the Trustor and shall then be delivered to the Trustee for certification, and the Trustee thereupon shall certify and deliver said bonds as hereinafter in Article II provided. The coupons of said bonds shall be signed by the facsimile signature of the Trustor.

Section 8. The principal of and the interest on all of said bonds issued hereunder shall be payable at the main office of Citizens Trust and Savings Bank, in the City of Los Angeles, County of Los Angeles, State of California, or at the main office of Canal Commercial Trust & Savings Bank, in the City of New Orleans, State of Louisiana, at the option of the holder, and the Trustor shall make all arrangements and perform all acts necessary to make the bonds so payable.

In the event, however, that said bonds or any thereof shall be called for redemption they shall be payable on the redemption date only at the main office of Citizens Trust and Savings Bank as in Article V. provided.

## ARTICLE II.

### CERTIFICATION AND ISSUANCE.

Section 1. Only such bonds as shall bear thereon a certificate in substantially the form hereinbefore recited, executed by the Trustee, shall be secured by this indenture, or shall be entitled to any lien, right or benefit hereunder, and no such bonds nor any coupon appertaining thereto shall be valid for any purpose until such certificate on such bond shall have been executed by the Trustee, and such certificate of the Trustee upon any such bond shall be conclusive evidence, and the only evidence, that the bond so authenticated, or its coupons, has been duly issued hereunder, and that the holder is entitled to the benefit of the

trust hereby created. The Trustee shall not certify any bond after its date of maturity.

Section 2. The amount of bonds secured hereby which may be executed by the Trustor and which may be certified by the Trustee is limited, so that never at any time shall there have been executed and certified bonds secured hereby for an aggregate principal sum exceeding Three Hundred Sixty Thousand Dollars (\$360,000.00), exclusive of bonds executed and certified in exchange for or in substitution of bonds mutilated, lost or destroyed, as in Section 6 of Article i provided.

Section 3. Upon the execution and recording of this indenture, all of the bonds to be certified and issued hereunder shall by the Trustee be certified and delivered forthwith upon the order of the Trustor.

Section 4. Before certifying or delivering any bonds, all matured coupons thereon shall be cut off and cancelled by the Trustee.

Section 5. The Trustee shall not be required to certify or deliver any bonds hereunder when the Trustor is, to the knowledge of the Trustee, in default with respect to any covenant, condition or agreement in this indenture contained, whether said default shall constitute an event of default as hereinafter defined or not.

Section 6. All bonds whenever issued and for whatever purpose are equally secured by and are entitled to the benefits of the trusts created in this indenture, without priority of one over another.

### ARTICLE III.

#### PARTICULAR COVENANTS.

Section 1. The Trustor covenants and agrees that she will duly and punctually pay or cause to be paid the prin-

principal and interest of every bond issued hereunder at the times and places and in the manner mentioned in said bonds and in the coupons thereto belonging respectively, according to the true intent and meaning thereof, and of these presents, without deduction for any tax or taxes, assessments or other governmental charges which the Trustor or the Trustee or other paying agent may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law or ordinance of the United States or of any state, county, municipality or other lawful taxing authority therein, not exceeding, however, in the case of federal or other income taxes an aggregate of two per cent (2%) of the interest upon said principal; and the Trustor covenants and agrees that she will seasonably pay and save the holders of the bonds issued hereunder harmless from or by reason of such taxes, assessments and charges.

The Trustor hereby agrees, for the benefit of the persons who shall be from time to time the holders of said bonds and coupons, to reimburse such holders, upon written demand being made on the Trustor or upon Citizens Trust and Savings Bank or Canal Commercial Trust & Savings Bank of New Orleans, as her agents, for any taxes, assessments or charges which such holders may be required to pay, except as hereinbefore specified, unless and until the Trustor or the Trustee or either paying agent shall be required or permitted to pay, retain or deduct said taxes, assessments or charges.

Interest on said bonds shall be payable only on presentation and surrender of the several coupons for such interest as they severally mature, and when paid, such coupons shall forthwith be canceled.



Section 2. The Trustor agrees that she will not, directly or indirectly extend or assent to the extension of the time for the payment of any bond or coupon or claim for interest upon any of the bonds, and that she will not, directly or indirectly, be a party to or approve of any such arrangement by purchasing or funding any such bond or coupon, or in any other manner. In case the time for payment of any such bond or coupons or interest shall be so extended, whether or not such extension shall be with the consent of the Trustor, no claim for any such interest or for any amount due on any bond or coupon shall be deemed to subsist, except subject to the prior payment in full of the principal of all bonds then outstanding and of all matured interest on bonds, the payment of which has *not* been so extended.

Section 3. The Trustor covenants and agrees that she will from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges lawfully imposed upon the trust estate, or upon any part thereof, or upon the income and profits thereof, and will also pay and discharge all taxes, assessments and governmental charges imposed upon the interest of the Trustee, or upon the interest of the holder of any bond or coupon, in the trust estate; provided, however, that if the Trustor shall in good faith contest by legal proceedings any tax, assessment or charge in this section mentioned, the Trustor shall have the right, pending such contest, to delay or defer the payment thereof, but not so as to lose the right of redemption from any sale under any tax, assessment or governmental charge, and not if such payment shall, in the opinion of the Trustee, be necessary to prevent the forfeiture or loss of the trust estate or any part thereof.



Section 4. The Trustor covenants and agrees that she is well seized of the property herein conveyed and had good and indefeasible title to the same; and has good right, full power and lawful authority, to grant, bargain and sell, and to convey and mortgage the same in the manner and form herein done or intended to be done, and will warrant and forever defend the same to the Trustee against the claims of all persons whomsoever.

Section 5. The Trustor covenants and agrees that this indenture now is and always will be kept a first lien upon all the property described or mentioned in the granting clause hereof, and upon all property that hereafter shall be placed upon said property, and upon all renewals and replacements of such property; and that she will not voluntarily create or suffer to be created or to arise any lien or charge of priority to or preference over the lien of these presents upon the property mortgaged or deeded in trust, or any part thereof or interest therein, or upon the income thereof; and that she will forthwith after the same shall accrue, pay or cause to be discharged or paid, or will make adequate provision for the satisfaction or discharge of every lawful claim and demand for labor, material, supplies or other objects which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon said property, or any part thereof, or upon the income thereof; and that she will not suffer any claim of paramount title to be established to any of the said property, but if so established, she will proceed to acquire or extinguish any such claim of title.

Section 6. The Trustor covenants and agrees that so long as any of said bonds are outstanding, she will insure and keep insured or cause to be insured and kept insured

in some standard and solvent insurance company or companies, authorized to transact business in the State of California, and approved in writing by Sutherlin-Barry & Company, Inc., any and all buildings nor or hereafter erected upon the real property hereby mortgaged or deeded in trust, together with the fixtures and appurtenances thereof, against loss or damage by fire and/or earthquake in at least the amounts following; not to exceed, however, in any case, the full insurable value of such property:

(1)

ENGSTRUM ARMS APARTMENT  
HOTEL PROPERTY.

(a) Fire insurance to the net amount of Two hundred ninety thousand (\$290,000); provided, however, that this amount may be reduced by seven hundred fifty dollars (\$750) for each One thousand dollars (\$1,000) principal amount of bonds under Three hundred sixty thousand dollars (\$360,000) which may be outstanding hereunder, except that this provision for reduction of the amount of said insurance shall not be applicable if at the time the so-called Venice properties are not subject to the lien of this mortgage or deed of trust; and

(b) Earthquake insurance in an amount equal to Fifty per cent (50%) of the principal amount of bonds outstanding hereunder.

(2)

VENICE PROPERTIES

(a) Fire insurance in a net amount of Seventy thousand dollars (\$70,000) provided, however, that this amount may be reduced by Fifty Dollars (\$50) for every One thousand dollars (\$1,000) principal amount of bonds under

Three hundred sixty thousand dollars (\$360,000) which may at the time be outstanding hereunder;

(b) Earthquake insurance in an amount equal to Fifty per cent (50%) of the full insurable value of said properties.

The Trustor will also carry in like company or companies insurance against loss of rentals resulting from damage to said building or buildings by fire or earthquake in an amount equal to the maximum rental insurance that may be obtained in respect of such properties.

All policies of insurance provided for in this section shall contain customary "New York Standard Loss Payable" clauses and each policy of fire insurance herein provided for shall contain an endorsement of the customary "Fallen Building Clause Waiver". All such policies shall be delivered to and be payable to the Trustee; and the Trustor will promptly pay or cause to be paid the premiums for such insurance as they may accrue. In case of any loss under any such policy or policies of insurance, the Trustee may adjust, collect and receipt for and in its discretion compromise all claims under said policy or policies, and any moneys due thereunder shall be paid to the Trustee.

In case of destruction of, or damage to, *ooo* or any part of said building or buildings by fire or earthquake, the Trustor shall either forthwith proceed to rebuild, restore or repair said building or buildings or to redeem or purchase and cancel all bonds secured hereunder then outstanding. In case the Trustor shall so proceed to rebuild, repair, or restore, the building or buildings as so rebuilt, repaired or restored shall be of a value not less than, and be substantially similar in all respects and not inferior in structure or equipment to, the building or buildings so destroyed or damaged.

In the event that any such loss shall exceed Twenty-five thousand dollars (\$25,000) and the Trustor shall not elect to redeem or cause to be purchased and cancelled all bonds then outstanding, the Trustor shall submit to the Trustee, plans and specifications for the repairing, rebuilding or restoring of the property damaged or destroyed, which plans and specifications shall be subject to the approval of the Trustee, and shall exhibit to the Trustee any contract or contracts for such work or for the supplying of any such materials. In order to determine such cost, the Trustee may thereupon obtain from any disinterested architect or contractor an estimate of the cost of such repairing, rebuilding, restoring, renewing or replacing, the cost of which may be deducted from the amount of such insurance.

Any money received under any such policy of insurance against loss of rentals shall be deposited with the moneys provided to be deposited under Article IV hereof and such deposits shall be considered as discharging the obligation of the Trustor to make monthly payments as in Article IV provided to the extent to which any such transfers are made. Any money received by the Trustee on account of any loss or damage covered by any other of the above policies of insurance may, if the Trustor shall proceed to repair, rebuild or restore, be used and applied by the Trustor for the purpose of such rebuilding, repairing or restoring. In such event the Trustee shall pay over said insurance moneys or a part thereof upon the written request of the Trustor which request shall recite and declare that the Trustor has actually expended in the rebuilding, repairing, or restoring of the property destroyed or damaged a sum equal to or not less than the amount of moneys called for in such demand, which request shall also

be accompanied by a certificate of an architect satisfactory to the Trustee that the Trustor has actually expended such amount in such rebuilding, repairing or restoring, and that such rebuilding, repairing or restoring has been completed free from all claims or mechanics' liens, and that the building or buildings as so rebuilt, repaired or restored is of a value not less than and is substantially similar in all respects and not inferior in structure or equipment to the building or buildings so damaged or destroyed.

If it shall appear, at any time, after the Trustor shall have proceeded to rebuild, repair or restore as aforesaid, that said insurance moneys are not sufficient to pay for the repairing or completion and erection of said building or buildings, as aforesaid, the Trustor shall on demand of the Trustee deposit such shortage or deficit with the Trustee, or the Trustor may deliver *to* cause to be delivered to the Trustee a good and sufficient bond with sureties satisfactory to the Trustee and in a form satisfactory to the Trustee, which bond shall be conditioned that the Trustor shall and will repair such building or erect and complete such new building or buildings as aforesaid, free from all claims or mechanics' liens. Such demand having been made the Trustee shall disburse said insurance moneys as aforesaid, upon such deposit being made or upon such bond being furnished but not otherwise. In the repair or erection of such new building or buildings, any delays caused by insurrection, riots, strikes, storms, fires, the Act of God, or any unavoidable shortage of materials or labor, or other causes beyond the control of the Trustor (financial inability excepted) shall not be considered as constituting a lack of diligence on the part of the Trustor.



Such insurance moneys until so paid over, shall be held by the Trustee as part of the trust estate. Any and all balances remaining in the hands of the trustee after the complete repairing, rebuilding, and restoring of said building or buildings, as aforesaid, shall be applied by the Trustee to the redemption or purchase and cancellation of bonds as provided in Article V.

In case the Trustor shall not within ninety (90) days after the happening of such damage or destruction of such building or builings the Trustee shall thenceforth hold all insurance moneys received by it as above provided for the purchase or redemption of bonds secured hereby and the Trustor shall forthwith deposit with the Trustee such amount as will be sufficient, in addition to all amounts then held by the Trustee and available for such purposes, to redeem on the next interest payment date all of the bonds secured hereby then outstanding, and the Trustee shall thereupon apply such moneys to redeem all such bonds in the manner provided in Article V. hereof.

Section 7. The Trustor covenants and agrees that, so long as any of the said bonds are outstanding, she will carry in some standard and solvent insurance compant or companies authorized to transact business in the State of California and approved in writing by Sutherlin-Barry & Company, Inc., policies of public liability insurance, boiler insurance, and workmen's compensation insurance (or employees' liability insurance) insuring against loss or damage to persons or property in or upon or in connection with the property hereby mortgaged or deeded in trust, all of such insurance to be in no event less than the following respective amounts:

(1)

ENGSTRUM ARMS APARTMENT  
HOTEL PROPERTY.

Boiler insurance, Fifty thousand dollars (\$50,000); public liability insurance, Fifty Thousand dollars (\$50,00); workmen's compensation or employees' liability insurance, for the amount fixed by law but in no event less than Twenty-five thousand dollars (\$25,000).

(2)

VENICE PROPERTIES.

Workmen's compensation or employees' liability insurance for the amount fixed by law.

The policies for such boiler insurance shall be payable to the Trustee for the benefit of the Trustor and the holders of the bonds and coupons as their respective interests shall appear, and the policies for such workmen's compensation insurance and such public liability insurance shall be payable to the Trustor. All said insurance policies shall be delivered to the Trustee by the Trustor. The Trustor covenants and agrees promptly to pay the premiums for such insurance as they become due.

Section 8. The Trustor covenants and agrees that if she shall fail to perform any of the covenants contained in Sections 3, 5, 6 or 7 of this Article, the Trustee may, but shall not be obliged to, perform the same or cause the same to be performed on behalf of the Trustor, making advances therefor, and the Trustor agrees that she will upon demand, repay all sums so advanced, together with interest at seven per cent (7%) per annum until paid; and all sums so advanced by the Trustee, or by anyone on its behalf, are hereby declared to be secured by lien upon the trust

estate in priority to the bonds and coupons hereby secured. No such advance shall be deemed to relieve the Trustor from any default hereunder.

Section 9. The Trustor covenants and agrees that she will cause this indenture to be duly and properly filed for record and recorded in the office of the County recorder of Los Angeles County, California, with all convenient speed, and that it will be properly and legally indexed in such office as a deed, a trust deed, a mortgage or realty, a mortgage of personalty and a power-of-attorney, so that due and legal notice of its terms will be given; and that she will hereafter cause to be duly and properly filed for record and recorded any supplementary conveyance or transfer, as far as may be necessary to make this indenture and all such conveyances a good and valid lien upon the properties respectively covered thereby against all persons whomsoever.

Section 10. The Trustor covenants and agrees that she will at any time, make, do, execute and deliver all such further and other acts, deeds and things as shall be reasonably required to effectuate the intention of these presents and to assure and to confirm to the Trustee or its successors all and singular the property hereinbefore described and hereby intended to be granted, so as to render the same available for the security and satisfaction of the bonds secured hereby, according to the intent and purpose herein expressed.

Section 11. The Trustor covenants and agrees that she will execute and acknowledge and deliver to the Trustee such further assignments or transfers or other instruments as the Trustee may from time to time require to enable the Trustee, in the event of its taking possession of

the property hereunder, to collect or receive all moneys, rentals, or tolls, due or to grow due, upon any leases and contracts (including existing leases and contracts) or in any manner whatsoever.

Section 12. The Trustor covenants and agrees that she will at all times hereafter upon the written request of the Trustee or of the holder or holders of twenty-five per cent (25%) in amount of the bonds secured by this indenture then outstanding, furnish and deliver to such Trustee or holder or holders, as often and in such form as may be required by such Trustee or holder or holders a statement in writing, showing her financial condition and specifying particularly her earnings and expenses, together with the earnings and expenses of the Trust estate, month by month, for a period of at least one year immediately prior to the time of making any such request.

Section 13. The Trustor covenants and agrees that proper books of record and account will be kept, in which full, true and perfect *entires* will be made of all dealings or transactions of or in relation to the plants, buildings, properties, business and affairs of the Trust estate, which books shall at all reasonable times be open to the inspection of the Trustee.

Section 14. The Trustor covenants and agrees that any business carried on by her on the trust estate will be continually carried on and conducted in an efficient manner; that all property, buildings, improvements, machinery, fixtures, appliances and equipment useful and necessary in the carrying on of said business will be kept on said property and maintained in good condition and in thorough repair and in a state of high operating efficiency, and, if

worn or injured, will be replaced by other property suitable and of at least equal value.

Section 15. The Trustor covenants and agrees that at any and all times she will permit the Superintendent of Banks of the State of California, or his duly authorized representative, to make an examination of the real and/or personal property, books, records and accounts of the Trustor. Any investigation made pursuant to the provisions of this section shall be at the expense of the Trustor. The Trustor covenants and agrees to furnish for the use of the Superintendent of Banks of the State of California semi-annual statements covering the following matters:

(a) Total amount of bonds authenticated by the Trustee;

(b) Total amount of bonds retired and cancelled;

(c) Whether or not interest on bonds has been paid promptly at *ach* maturity;

(d) Whether or not all matured interest coupons have been cancelled; and

(e) Whether or not any land covered by the granting clauses hereof has been released, and, if any, a description of the same.

The Trustee will cooperate with the Trustor in the preparation of such statements and will sign the same and verify them as to such matters contained therein as may be within the knowledge of the Trustee.

Section 16. The Trustor covenants and agrees that she well and truly will keep, observe and perform any and all obligations and regulations now or hereafter imposed upon her by contract or prescribed by any law of the United States or of any state, or by any ordinance of any municip-



ality or governmental body having jurisdiction or control thereof, or in respect thereto, as a lawful condition to the continued enjoyment and use of the property, leases, contracts, rights, and franchises now owned by her, or hereafter acquired by her, to the end that such property, leases, contracts, rights and franchises and the use thereof may be maintained and preserved and may not become abandoned, forfeited or in any manner impaired.

#### ARTICLE IV.

#### PROVISIONS FOR PAYMENT OF PRINCIPAL AND INTEREST OF BONDS.

The Trustor covenants and agrees that on the 15th day of each calendar month commencing on the 15th day of August, 1925, and continuing so long as any of the bonds issued hereunder are outstanding, she will deposit with the Trustee a sum of money in gold coin of the United States of America of or equal to the present standard of weight and fineness which shall be equal to one-twelfth (1/12th) of the total amount of principal and interest which will become due and payable upon the bonds issued hereunder then outstanding during the period from but excluding the 1st day of August then immediately preceding to and including the 1st day of August then immediately following.

Said payments shall be applied by the Trustee without further direction to the payment and discharge of the interest and principal payments becoming due on the bonds issued hereunder as such payments mature. Until so applied said payments shall be held in trust as part of the security for the bonds and coupons issued hereunder.

Nothing in this Article shall be deemed to relieve the Trustor of liability for the payment in full and when due of principal and interest of all bonds issued hereunder.

## ARTICLE V.

PURCHASE AND REDEMPTION OF BONDS.

Section 1. All moneys held by the Trustee for the purchase or redemption of bonds issued hereunder (excluding money received by the Trustee under Article IV hereof) and all moneys received by the Trustee under any provisions of this mortgage or deed of trust which shall not be needed for the purpose for which they were received or for the disposition of which no other provision is in this mortgage or deed of trust made, shall be applied as hereinafter in this Article provided.

Section 2. Whenever Three thousand dollars (\$3,000) or more of such money is held by the Trustee it shall invite offers (and whenever it holds less of such money it may invite offers) for the sale to if of a sufficient number of bonds issued hereunder as shall in its judgment be warranted by the amount of moneys then in its hands (a) by mailing a notice inviting such offers to Sutherland-Barry & Company, Inc., and (b) (but only if requested so to do by the Trustor) by publishing once in a daily newspaper of general circulation published in Los Angeles, California, and in a daily newspaper published in New Orleans, a like notice; such mailing and such publication (if publication is had) to be made not less than five (5) days and not more than ten (10) days prior to the date specified in such notice for the opening of the offers. Upon the opening of such offers the lowest offers submitted in the order of their receipt, if at a price or prices not higher than the principal amount of such bonds, plus interest secured on such principal amount, plus the premium at which such bonds could be redeemed at the next possible redemption date, shall be accepted without preference or distinction on ac-

count of the maturity of the bonds so offered or otherwise except by reason of price and time of receipt of offers to the extent of the money then in the hands of the Trustee for that purpose, and bonds shall be purchased to that extent. If bonds equal to the amount of moneys then in the hands of the Trustee for that purpose are not offered at or less than the price above specified the Trustee forthwith shall notify the Trustor of the unapplied amount of such moneys in its hands and such unapplied moneys shall be available to the Trustor for the redemption of bonds issued hereunder. The Trustor covenants and agrees that she will thereupon call for redemption upon the next possible redemption date as many bonds as such moneys shall be sufficient to redeem.

Section 3. On any semi-annual interest date the Trustor may redeem and pay all or any part of the bonds secured hereby then outstanding, prior to the maturity thereof, by the payment of the principal thereof and interest on the principal accrued to date of redemption, together with a premium of five per cent (5%) upon the principal thereof, if such redemption be effected on or before August 1, 1930; a premium of four per cent (4%) upon such principal if such redemption be effected thereafter and on or before August 1, 1935; and a premium of two per cent (2%) upon such principal if such redemption be effected after August 1, 1935, and prior to maturity.

The Trustor shall give written notice to the Trustee of her election to redeem and of the number of bonds to be redeemed; not less than sixty (60) ays prior to the date fixed for such redemption, and in case the Trustor shall elect to redeem less than the entire issue of bonds secured hereby then outstanding, upon receiving from the Trustor

notice of her election to redeem, the Trustee shall select the bonds so to be redeemed, selecting from the bonds then outstanding those of the longest maturity in their inverse numerical order, and shall furnish the Trustor a list of such bonds.

Section 4. In case of any call for redemption, the Trustor shall publish in one daily newspaper of general circulation in the City of Los Angeles, County of Los Angeles, State of California, and in one daily newspaper published in New Orleans, Louisiana, at least once in each week for four (4) successive weeks, the first publication to be not less than forty (40) and not more than sixty (60) days before the date of redemption, a notice stating that the Trustor has called for redemption the bonds specified in such notice; that upon the date therein designated there will become due upon each of such bonds the principal thereof and interest accrued to date of redemption, together with a premium of five per cent (5%) upon the principal thereof, if such redemption be effected on or before August 1, 1930; a premium of four per cent (4%) upon such principal if such redemption be effected thereafter and on or before August 1, 1935, and a premium of two per cent (2%) upon such principal if such redemption be effected after August 1, 1935, and prior to maturity, and that no further interest will accrue upon such bonds after the date fixed for redemption.

Section 5. On or prior to the date of redemption, the Trustor shall deposit with the Trustee in United States gold coin of or equivalent to the present standard of weight and fineness, a sum sufficient to pay the principal of the bonds called for redemption and the interest and premium thereon, and shall file with the Trustee a certi-

ificate authorizing the call for redemption of such bonds. On or after the date fixed for redemption, from the sum so deposited by the Trustor, the Trustee shall pay to the holder or holders of the bonds called for redemption the amounts payable on such bonds, upon surrender of such bonds and upon surrender of the accompanying coupons maturing on the date of redemption, together with all subsequent coupons. On and after the redemption date when any bonds called for redemption become payable as aforesaid, the moneys applicable as aforesaid to the payment and redemption thereof shall be held by the Trustee in special trust deposit for payment of such bonds in the manner and at the rate specified; and from and after such redemption date, if the moneys sufficient for such redemption shall have been so deposited, and the notice specified shall have been given, no further interest shall accrue upon any such called bonds, and any coupons appertaining to such bonds for interest maturing after such date shall become and be null and void, anything in such bond or in such coupons or in this agreement to the contrary notwithstanding. All bonds so redeemed and paid by the Trustee shall be cancelled by the Trustee.

Section 6. The Trustee shall not be required to give notice of any call for redemption, and in case any question shall arise as to whether notice of redemption has been sufficiently given by the Trustor the decision thereon of the Trustee shall be final and binding upon all parties in interest. In case, however, under any of the provisions of this mortgage or deed of trust the redemption of bonds shall at any time be required and the Trustee shall hold money available for such redemption, the Trustee may give the proper notices of redemption in the name of the



Trustor or in its own name if the Trustor refused or neglects so to do.

Section 7. All bonds that shall be purchased or redeemed and paid hereunder, together with all unmatured coupons, shall be cancelled by the Trustee and delivered to the Trustor.

Section 8. Upon deposit with the Trustee of the amount necessary to redeem all outstanding bonds issued hereunder and payment to the Trustee of its reasonable compensation, expenses and disbursements, and the receipt by the Trustee of proof satisfactory to it of the due publication of notice of redemption the Trustee shall upon the written request of the Trustor discharge and satisfy this mortgage or deed of trust and assign, or cause to be assigned, and deliver to the Trustor, her executor, administrators or assigns, all the trust estate then held by it hereunder except such amounts so deposited in respect of such redemption which amount shall thenceforth be held by the Trustee in trust for the payment to the holders of the bonds and coupons issued hereunder and then outstanding of the respective amounts due upon such redemption.

## ARTICLE VI.

### DEFAULT AND REMEDIES.

Section 1. An event of default hereby is defined to be the happening of one or more defaults or failures on the part of the Trustor, in cases as follows:

(a) In case default shall be made in the payment of any interest on any bond secured hereby, when and as the same shall become payable as therein and herein provided, and any such default shall continue for a period of sixty (60) days; or

(b) In case default shall be made in the payment of the principal of any bond secured hereby, when the same shall become due and payable; or in case default shall be made in the payment of taxes or insurance premiums pursuant to Sections 6 and 7 of Article III and the Trustee shall in writing have declined to pay the same on behalf of the Trustor; or

(c) In case default shall be made in the due observance or performance of any other covenant or condition contained herein, required to be kept or performed by the Trustor, and any such default shall continue for a period of sixty (60) days after written notice thereof to the Trustor from the Trustee, or from the holders of ten per cent (10%) in amount of the bonds secured hereby then outstanding; or

(d) In case the Trustor shall go or be put into bankruptcy or insolvency; or

(e) In case default shall be made in the payment of any interest, as set forth in paragraph (a) above or default shall be made in the observance of any covenant or condition, as set forth in paragraph (c) above, and during the continuance of such default but before the expiration of the sixty (60) day period of grace, there shall be an existing judgment against the Trustor remaining unsatisfied for more than ten (10) days and unsecured by bond on appeal or in any judicial proceeding by any party other than the Trustee, a receiver shall be appointed for the mortgaged property or any part thereof, or a judgment or order entered for the sequestration of any of said property.

Section 2. If one or more of the events of default shall happen, then and in each and every such case the Trustee, either personally or by its agents or attorneys, may, in its

discretion, and upon the written request of the holders of twenty-five per cent (25%) in amount of the bonds secured hereby then outstanding (unless proceedings for the foreclosure of this mortgage or deed of trust and the appointment of a receiver as hereinafter provided are instituted) forthwith shall enter into and upon and take and hold possession of the trust estate, and may exclude the Trustor and her agents, servants, executors, administrators, successors, assigns and all other persons or corporations wholly therefrom, and may use, operate, manage and control the trust estate to the best advantage of the holders of the bonds secured hereby.

Upon every such entry the Trustee from time to time, at the expense of the trust estate, either by purchase, repair or construction, may maintain and restore and insure or keep insured the trust estate and make all necessary repairs, renewals, replacements, alterations, additions, betterments and improvements, as it may deem judicious. The Trustee in case of such entry shall have the right to manage the trust estate and exercise all the rights and powers of the Trustor either in the name of the Trustor or otherwise, as the Trustee shall deem best; and shall be entitled to collect, take and receive all tolls, earnings, income, rents, issues and profits of the trust estate.

After deducting the expenses of operating the trust estate and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments that may be made for taxes, assessments, insurance and prior or other proper charges upon the trust estate or any part thereof, as well as just and reasonable compensation for its own services and for the services of all counsel,

agents and employees by it properly engaged and employed, the Trustee shall apply the moneys arising aforesaid as follows:

First: In case the principal of none of the bonds secured hereby shall have become due, to the payment of interest in default in the order of the maturity of the coupons, with interest thereon at the rate of seven per cent (7%) per annum; such payments to be made ratably to the persons entitled thereto without discrimination or preference except as provided in Section 2, Article III, hereof, in the case of bonds and/or coupons the time for payment of which has been extended.

Second: In case the principal of any of the bonds secured hereby shall have become due by declaration or otherwise, first to the payment of the accrued interest, with interest at the rate of seven per cent (7%) per annum, on the overdue coupons in the order of their maturity, and then to the payment of the principal of all bonds secured hereby then due; such payments to be made ratably to the persons entitled thereto without discrimination or preference except as provided in Section 2, Article III hereof in the case of bonds and/or coupons the time for payment of which has been extended.

Upon the payment in full of whatever may be due for such principal or interest, or payable for other purposes, and providing for the next installment of interest to become due, the trust estate shall be returned to the Trustor, her heirs or assigns or to whomsoever may be lawfully entitled thereto.

Section 3. If one or more of the events of default shall happen the Trustee may and upon the written request of the holders of twenty-five per cent (25%) in amount of

the bonds secured hereby and then outstanding, shall, by notice in writing delivered to the Trustor, or recorded in the recorder's office in Los Angeles County, declare the principal of all bonds secured hereby then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding.

This provision, however, is subject to the condition that, if at any time after the principal of said bonds shall have been declared due and payable, all arrears of interest upon all such bonds, with interest on the overdue installments of interest, the expenses of the Trustee and all other sums which may have become due and payable by the Trustor under the terms of said bonds or hereunder, other than the principal of said bonds so called due, shall be paid, or be collected out of the trust property and all other defaults, if any exist, shall be made good before any sale of the trust property shall have been made, then and in every such case the holders of a majority in amount of the bonds secured hereby then outstanding, by written notice to the Trustee, may waive such default and its consequences, and obtain from the Trustee a rescission of such declaration of the maturity of the principal; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 4. If one or more of the events of default shall happen, the Trustee in its discretion may, and upon the written request of the holders of twenty-five per cent (25%) in amount of the bonds secured hereby and then outstanding, shall proceed to protect or enforce its right or rights of the bondholders under this indenture by a suit in



equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties hereunder; and upon instituting such proceedings or in order to take possession as hereinbefore provided, the Trustee shall be entitled to the appointment of a receiver of the trust estate and to the sale of the trust estate as an entirety, if the court in its discretion shall so order.

Section 5. If one or more of the events of default shall happen, the Trustee, with or without entry, personally or by attorney, in its discretion may, and upon the written request of the holders of twenty-five per cent (25%) in amount of the bonds secured hereby then outstanding, shall proceed to sell to the highest and best bidder all and singular the trust estate and all rights, title, interest, claim, equity of redemption and demand of the Trustor therein and thereto. Such sale shall be at public auction at such time and place as the Trustee may fix. The Trustee shall give notice of the time and place thereof by publishing a notice setting forth the time and place thereof by publishing a notice setting forth the time and place of such sale, and describing in general terms the property to be sold, which said notice shall be published once a week for four (4) successive weeks in a newspaper of general circulation published in the City of Los Angeles, California, and in addition shall give any other notice which may be required by law.

Section 6. In the event of any sale, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the principal of all the bonds secured hereby, if not previously due, shall become and be immediately due and payable, anything in said bonds or in this indenture contained to the contrary notwithstanding.

Section 7. In the event of any such sale whether made under the power of sale hereby granted or conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the trust estate shall be sold in one parcel, and as an entirety, including all real and personal property, and all other property of every name and nature covered by this mortgage or deed of trust (except money in any of the funds herein mentioned) unless otherwise directed by some court of competent jurisdiction, or unless in case of a sale made under the power of sale hereby granted, the Trustee, in its discretion, shall determine to sell said property and premises in parcels, in which case the sale shall be made in such parcels as may be specified in such order or decree of court, or as may be determined by the Trustee.

Section 8. The Trustee from time to time may adjourn any such sale to be made by it by announcement at the time and place appointed for such sale or such adjourned sales, and without further notice or publication it may make such sale at the time to which the same shall be so adjourned, but in the event of such adjournment or adjournments, sale shall be made within twelve (12) months from the date of sale first fixed in the advertisement.

Section 9. Upon completion of any such sale or sales the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or deeds, of conveyance and transfer of the property sold or shall execute and deliver in conjunction with the deed or deeds of the court officer conducting such sale, a proper release of such property. The Trustee hereby is appointed the true and lawful attorney irrevocably of the Trustor in her name and stead to make all necessary deeds of conveyance and transfer of such property; and for that purpose the Trustee may execute all necessary acts of conveyance, assignment and transfer, and may substitute one or more persons or corporations with like power; and the Trustor hereby ratified and confirms all that her said attorney or attorneys, or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Trustor if so requested by the Trustee, shall execute and deliver to the purchaser or purchasers such deeds of conveyance, assignments, transfers and releases as may be designated in such request.

Section 10. Any such sale or sales shall divest all right, title, interest, claim, equity of redemption and demand whatsoever, either at law or in equity, of the Trustor, in and to the property and premises sold, and shall be a perpetual bar, both at law and in equity against her, her heirs, executors, administrators, successors and assigns, and against any and all persons claiming or to claim the property sold or any part thereof, from, through or under the Trustor, her heirs, executors, administrators, successors and assigns.

Section 11. The receipt of the Trustee or of the court officer conducting such sale shall be sufficient discharge

for the purchase money to any purchaser of the property, or any part thereof, sold as aforesaid, and no such purchaser or his representatives, grantees, or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of such purchase money or any part thereof or be bound to enquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 12. In case of any such sale, whether pursuant to judicial decree or otherwise, the purchaser for the purpose of making settlement or payment of the property purchased, shall be entitled to turn in or apply toward the payment of the purchase price any bonds issued hereunder and any matured and unpaid coupons and to be credited therefor, to the extent of the value of or amount which would be payable upon such bonds and coupons upon a distribution among the bondholders of the net proceeds of such sale, after making the deductions allowable under the terms hereof for the costs and expenses of the sale and otherwise; but such bonds and coupons so applied in payment by the purchaser shall be deemed to be paid only to the extent so applied.

Section 13. At any such sale, the Trustee or any bondholder or their agents may bid for and purchase such property, and may make payment on account thereof, as aforesaid, and upon compliance with the terms of sale may hold, retain and dispose of such property without further accountability therefor.

Section 14. The purchase money, proceeds and avails of any such sale, together with any sums which then may be held by the Trustee, or be payable to it under any of the provisions of this indenture as part of the trust estate or of the proceeds thereof, shall be applied as follows:

First: To the payment of the costs, expenses, fees and other charges of such sale, a reasonable compensation to the Trustee, its agents and attorneys, all expenses and liabilities incurred and advances made by the Trustee in managing and maintaining the property, and all taxes, assessments, water rates or liens thereon prior to the lien of these presents, except any taxes, assessments, water rates or other superior lien subject to which such sale shall have been made.

Second: Any surplus then remaining, to the payment of the whole amount owing and unpaid upon the principal and interest of the bonds secured hereby with interest on the overdue installments of interest at the rate of seven per cent (7%) per annum; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal and interest ratably to the aggregate of such principal and accrued and unpaid interest, without preference or priority of principal over interest or of interest over principal or of any installments of interest over any other installment of interest, except as specified in Section 2 of Article III in the case of bonds and/or coupons the time of payment of which has been extended.

Third: Any surplus then remaining to the Trustor, her heirs and assigns, or to whomsoever may be lawfully entitled to receive the same, upon lawful demand being made therefor.



Section 15. In case of a sale of the trust estate either under any power hereby granted or under judicial decree, and of the application of the proceeds of sale to the payment of the debt secured hereby, the Trustee in its own name and as Trustee of an express trust, shall be entitled to receive and to enforce payment of any and all deficiency or amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the mortgage debt remaining unpaid, with interest. In case of the death or bankruptcy of the Trustor, the Trustee in behalf of the bondholders and as their attorney in fact may file any claim or claims in the matter of her estate as shall be necessary to protect the bondholders in the recovery of any such deficiency.

Section 16. Any moneys recovered or collected by the Trustee under Section 15 of this Article shall be applied by the Trustee as specified in Section 14 of this Article.

Section 17. No remedy herein conferred upon or reserved to the Trustee or to the holders of bonds secured hereby is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute; and every power and remedy given to the Trustee or the bondholders by this indenture may be exercised from time to time and as often as may be deemed expedient.

Section 18. No delay or omission of the Trustee or of any holder of bonds secured hereby to exercise any right or power arising from any default, shall impair any such right or power or shall be construed to be a waiver of any

such default or acquiescence therein. In case the Trustee shall have proceeded to enforce any right under this indenture by entry, foreclosure or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reasons, or shall have been determined adversely to the Trustee, then and in every such case the Trustee and the bondholders, severally and respectively shall be restored to their former positions and rights hereunder, in respect to the trust estate; and all remedies, rights and powers of the Trustee and the bondholders shall continue as though no such proceedings had been taken.

Section 19. The Trustor covenants and agrees that (1) In case default shall be made in the payment of any interest on any of the bonds at any time outstanding secured hereby, and such default shall have continued for a period of sixty (60) days; or (2) In case default shall be made in the payment of principal of any such bonds when the same shall become payable, whether upon the maturity of said bonds, or by declaration as authorized by this indenture, or upon a sale as se t forth in this Article, then upon demand of the Trustee, the Trustor will pay to the Trustee, for the benefit of the holders of bonds and coupons entitled to receive such principal and interest so in default, the whole amount that then shall have become due and payable, for such interest or principal, or both, as the case may be, with interest upon the overdue installments of interest at the rate of seven per cent (7%) per annum; and in case the Trustor shall fail to pay the same forthwith upon such demand, the Trustee in its own name, and as Trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other rights, power or remedy, for the enforcement of the provisions of this indenture, or the foreclosure of the lien thereof; and in case of a sale of the trust estate and of the application of the proceeds of sale to the payment of the debt secured hereby, the Trustee in its own name and as trustee of an express trust, shall be entitled to enforce the payment and to receive all amounts then remaining due and unpaid upon any and all of the bonds and coupons then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of such debt remaining unpaid, with interest as aforesaid. No recovery of any such judgment by the Trustee and no levy of execution pursuant to any such judgment upon property subject to the lien of this indenture or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the trust estate or any part thereof, or the rights, powers or remedies of the Trustee, or of the holders of bonds and coupons, but such liens, rights, powers and remedies shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section shall be applied by the Trustee, first, to the payment of the expenses, disbursements and compensation of the Trustee, its agents and attorneys, and, second, toward the payment of the amounts then due and unpaid upon the bonds and coupons in respect of which such moneys shall have been collected, ratably, and without any preference

or priority of any kind (except as provided in Section 2 of Article III hereof), according to the amounts due and payable upon such bonds and coupons respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment thereof, if partly paid, and upon surrender thereof, if fully paid.

The powers granted to the Trustee by this section are expressly subject to the limitations prescribed by Section 20 of this Article.

Section 20. Notwithstanding the foregoing provisions of this article, the powers hereby granted to the Trustee are strictly subject to the limitations that if, by the commencement of any action at law to recover judgment for any amount due and unpaid hereunder or upon the bonds secured hereby, or by the exercise of any other remedy prior to or concurrently with proceedings to enforce the lien of this indenture upon the trust estate, the lien of this indenture upon the trust estate or the security hereby provided for would, despite the foregoing provisions of this Article, be surrendered, waived or lost, the Trustee shall have no power to commence such action at law or to exercise such prior or concurrent remedy. But in case any statute now in force providing in terms or effect that the commencement of an action to recover a debt secured by mortgage or other instrument shall be deemed a waiver of such security, or prohibiting the exercise of any other remedy prior to or concurrently with proceedings to enforce the lien of a mortgage or other instrument upon the premises mortgaged, deeded in trust or otherwise set over as security, or any statute which now impairs or suspends the virtue of the foregoing provisions of this

Article and of which the Trustor might take advantage, despite said provisions, shall hereafter be repealed or cease to be in force, such statute shall not be deemed to have become or to be a part of the contract contained in this indenture.

ARTICLE VII.  
RELEASES.

Section 1. At any time while the Trustor is not in default to the knowledge of the Trustee in the payment of principal or interest on any bond then outstanding hereunder or in respect of any of the covenants, agreements or conditions in this mortgage or deed of trust contained, she may request the Trustee to release from the lien of this mortgage or deed of trust the following portion of the property hereby mortgaged or deeded in trust, to-wit:

VENICE PROPERTIES

Lots "P" and "R" of Venice of America, in the City of Venice, County of Los Angeles, State of California, as per map recorded in Book 6, Pages 126 and 127 of Maps, in the office of the County Recorder of said County, and the Trustee thereupon shall, subject to the provisions in Section 2 of this Article prescribed, release the above described portion of said property from the lien and operation of this mortgage or deed of trust.

Section 2. Prior to the release of the property described in Section 1 of this Article the Trustee shall have received (a) Seventy thousand dollars (\$70,000) in Gold Coin of the United States of America of or equal to the standard of weight and fineness existing August 1, 1925, and (b) a request for the release of said property



signed by the Trustor, or a duly authorized agent, which request shall refer to the deposit of the above mentioned Seventy thousand dollars (\$70,000) and request the Trustee to apply said moneys to the purchase or redemption of bonds pursuant to Article V of this mortgage or deed of trust.

Section 3. Any moneys received by the Trustee under Section 2 of this Article shall forthwith be applied by it to the purchase or redemption of bonds in the manner provided in Article V. hereof.

Section 4. Any compensation or money which may be received either by the Trustor or the Trustee on account of the taking or of damage to any property at the time subject to the lien of this mortgage or deed of trust by proceedings in eminent domain or for condemnation or expropriation shall be applied to the purchase or redemption of outstanding bonds in the manner provided in Article V hereof. The Trustor covenants and agrees that if any such moneys are paid to her she will immediately transfer such moneys to the Trustee to be applied as above provided.

### ARTICLE VIII. CONCERNING THE TRUSTEE.

Section 1. The Trustee accepts the trusts created by this mortgage or deed of trust, but upon and only upon the terms and conditions hereof, including the following, all of which shall bind the Trustor and the holders of bonds hereunder.

Section 2. All recitals statements and representations of fact herein and in the said bonds issued hereunder contained save only the Trustee's certificate upon the bonds are made solely by and on behalf of the Trustor, and the Trustee assumes no responsibility as to the correctness

of any such recitals, statements or representations, or as to the validity of this mortgage or deed of trust, or the bonds issued hereunder, or as to the amount or extent of the securities afforded by the property hereby or intended hereby to be conveyed, assigned and transferred, or as to the validity of the title of any of said property, or for the breach of any of the covenants or agreements hereof by the Trustor or as to the application of any of the bonds certified and delivered hereunder, or (except as otherwise expressly provided) of the proceeds of any of them for any of the purposes herein expressed, or otherwise, or for the use or disposition of the said bonds, or the proceeds thereof, or as to the due execution hereof by the Trustor, or as to the lien purporting or intended to be hereby created, or for or in respect of the title of the trust estate, or for any other act or things done hereunder, except through its own wilful misconduct or gross negligence.

Section 3. The Trustee shall not be personally liable for any debts contracted or obligations incurred by it, of for nonfulfillment of contracts, or for damages for injuries to persons or property, or for damages for the death of any person, or for salaries, during any period wherein the Trustee shall manage or be in possession of the property hereby conveyed, assigned and transferred, as aforesaid.

Should any suit or proceeding be brought against the Trustee, by reason of any matter or thing connected with the trusts hereby created, or by reason of its being such Trustee, it shall be under no obligation to enter an appearance by counsel or in any way to appear in or defend such suit or other proceeding unless requested by bondholders as herein provided., but it may nevertheless appear and

defend such suit or proceeding if it elects so to do, and in such case, it and its counsel shall be compensated therefor, and it shall have a first lien and charge upon the trust property for the payment of such compensation.

Section 4. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it, if such agent or attorney shall have been selected with reasonable care.

Section 5. The Trustee shall be under no duty or obligation to pay or keep itself informed as to the payment of any taxes, assessments or other charges upon the property, or any part thereof, hereby or intended hereby to be conveyed, assigned and transferred, or which shall or may now or hereafter be lawfully imposed upon this instrument.

Section 6. The Trustee shall be under no duty or obligation to effect any insurance against loss or damage by fire or other peril upon any portion of the properties hereby or intended hereby to be conveyed, assigned and transferred, or to renew any policies of insurance thereon,

The Trustee shall be under no duty or obligation to see to the delivery to it of any insurance policies or other security assigned or transferred hereunder or agreed to be assigned or transferred hereunder or to give notice of its rights, or interest hereunder of the execution of this mortgage or deed of trust to any of the holders of such policies of insurance or other security assigned and transferred or agreed to be assigned or transferred hereunder or to any other person or corporation, and the Trustee is hereby authorized to accept for assignment and deposit hereunder, as herein provided, instruments on their face purporting to be the insurance policies, or other securities,

assigned and transferred, or agreed to be assigned and transferred hereunder.

Section 7. The Trustee shall be protected and held harmless in acting upon any notice, request, consent, certificate, bond or other instrument or paper provided for in this instrument believed by it to be genuine and to have been assigned or executed by the proper party or parties, and shall be entitled to receive the same, in its discretion, as conclusive proof of any fact or matter therein contained, upon which or by reason of which the Trustee may be required to act, or in its discretion may act. If in case at any time it shall be necessary or proper that the Trustee make any investigation respecting any facts preparatory to taking or not taking any action, or doing or not doing anything under this instrument as such Trustee, in respect to which this instrument does not make specific provision for evidence upon which the Trustee may or may not act, the certificate in writing of the Trustor shall be conclusive evidence in favor of the Trustee of such fact or facts and shall protect the Trustee. The Trustee may advise with legal counsel and shall be fully protected in respect to any action on this instrument taken in accordance with the opinion of such counsel.

Section 8. The Trustee shall not be responsible for the recording of this mortgage or deed of trust or of any supplement hereto or for any conveyance or transfer or further assurance, and shall not be required to file this mortgage or deed of trust or any such conveyance or transfer, or to see that notice of the lien and provisions hereof or thereof is given to any person, all of which matters the Trustor covenants and agrees to see to and perform as far as may be necessary to make this mortgage

or deed of trust and all such conveyances and transfers a good and valid lien upon the property respectively covered thereby against all persons whomsoever.

Section 9. The Trustee shall not incur any responsibility whatever in consequence of permitting or suffering the Trustor to retain possession of the mortgaged property, or any part thereof, and to use and enjoy the same, nor shall the Trustee be or become responsible for any destruction, deterioration, loss, injury or damages which may be done to any part of the property hereby mortgaged, transferred or conveyed, or for the sufficiency of the title thereto, or be in any way responsible for the consequence of any act or omission by the Trustor, her agents or servants.

Section 10. The Trustee may resign and discharge itself of the trusts created by this mortgage or deed of trust, by written notice to the Trustor, given thirty (30) days before such resignation shall take effect, or such other time as may be accepted by the Trustor. The Trustee may be removed at any time by an instrument, or concurrent instruments, in writing signed by the holders of a majority in amount of the bonds secured hereby then outstanding, such instrument or instruments to be filed with the Trustee.

Section 11. In case the Trustee, or any trustee hereafter appointed, shall, at any time, resign, or be removed, or otherwise become incapable of action, a successor or successors may be appointed by the holders of a majority in amount of the bonds secured hereby then outstanding by any instrument, or concurrent instruments, signed and acknowledged by such bondholders, or their attorneys in fact duly authorized; provided, nevertheless, and it is here-



by agreed and declared, that, in case of the resignation of the Trustee hereunder, the Trustor shall, by an instrument in writing, appoint a Trustee to fill such vacancy until a new trustee shall be appointed by the bondholders, as herein authorized. Any new trustee so appointed by the Trustor shall immediately and without further act be superseded by a trustee appointed in the manner provided above by the holders of a majority in amount of the bonds hereby secured. Every new trustee appointed in the place of the Trustee, or its successors in the trust, shall always be a trust company in good standing, authorized to accept said trust.

Section 12. Any such new trustee appointed hereunder shall execute, acknowledge and deliver to the Trustor an instrument accepting such appointment hereunder, and thereupon such new trustee shall, without further act, deed or conveyance, become vested with all the assets, properties, rights, powers and trusts of its predecessor in the trust hereunder, with like effect as if originally named as Trustee herein. But the Trustee retiring shall, nevertheless, on the written demand of the new trustee execute and deliver an instrument conveying and transferring to such new trustee upon the trusts herein expressed all the assets, property, contracts, stock, notes, mortgages, rights, powers and trusts of the Trustee so retiring and shall duly assign, transfer and deliver to the new trustee so appointed in its place all property and moneys held by it. Should any deed, conveyance or instrument in writing from the Trustor be required by any new trustee for more fully and certainly vesting and confirming to it the assets, properties, contracts, stocks, notes, mortgages, rights, powers, trusts and duties, then any and all such deeds, conveyances

and instruments in writing shall, on request of such new trustee, be made, executed, acknowledged and delivered by the Trustor.

Section 13. If at any time or times, in order to conform to any legal requirement, the Trustee shall deem it advisable, the Trustor and the Trustee shall have power to appoint, and shall unite in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, any trust company or one or more persons approved by the Trustee to act as co-trustee or co-trustees of all or any part of the trust estate jointly, with the Trustee originally named herein or its successor or successors.

Section 14. Any company into which the Trustee may be merged or with which it may be consolidated, or any company resulting from any merger or consolidation to which the Trustee shall be a party, shall ipso facto be and become successor of the Trustee hereunder and vested with all of the title to the whole trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was the above named Citizens Trust & Savings Bank as the original trustee hereunder, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 15. If any of the events of default hereinbefore defined shall have happened, it shall become the duty of the Trustee upon the written request of the holders of twenty-five per cent (25%) in amount of the bonds secured hereby then outstanding, and upon being indemnified as herein provided, to take all needful steps for the protection and enforcement of its rights and the rights of

the holders of the bonds secured hereby, or to exercise the power of entry herein conferred or to commence appropriate judicial proceedings by action, suit or otherwise, as the Trustee shall deem most expedient in the interests of the holders of the bonds secured hereby, unless otherwise directed by the bondholders as herein provided, but nothing provided herein shall affect any discretion herein given to the Trustee to determine whether or not it shall take action in respect of default without request from the bondholders. In the event that the Trustee, upon the happening of an event of default, shall have taken some action pursuant to its duties hereunder, whether upon its own discretion or upon the request of the holders of twenty-five per cent (25%) in amount of the bonds secured hereby, it shall be controlled in the matter of continuance or discontinuance of such action by the written request or discretion of a majority in amount of said bonds secured hereby, excepting, however, that such control shall not be exercised to stay or suspend a foreclosure suit instituted by the Trustee, nor to prevent such foreclosure from being filed, or to waive or stay any proceedings to be taken by the Trustee in case of any default, unless the principal of all bonds secured hereby which have matured according to their terms has been paid.

Section 16. The Trustee may become the owner of bonds and coupons secured hereby with the same right it would have if it was not Trustee hereunder.

#### ARTICLE IX.

#### MISCELLANEOUS PROVISIONS.

Section 1. The covenants and agreements herein contained shall be binding not only upon the Trustor but also

upon his heirs, executors, administrators, and assigns, and any act or proceeding by any provision of this indenture required or permitted to be done or performed by said Trustor may be done and performed with like force and effect by her heirs, executors, administrators and assigns. Any notice herein required to be given the Trustor may be given with like effect to her heirs, executors, administrators or assigns.

Section 2. In the event of the death or bankruptcy of the Trustor, the Trustee is hereby authorized and empowered as attorney in fact irrevocable and on behalf of the holders and owners of each and every outstanding bond secured hereby, but in its own name, to verify, present and/or prosecute a claim or claims for all outstanding sums, principal, interest and other amounts payable then or thereafter to said bondholders under the terms of this mortgage or deed of trust, or the bonds secured hereby, against the estate of said Trustor or to take such other action as may be necessary or advisable by reason of such death or bankruptcy, accompanying such claim or claims, if required by law, with a copy or copies of such outstanding bond or bonds in the form and manner so required. Provided, however, that the Trustee shall be under no duty to do any of the things in this section mentioned unless the holders of twenty-five per cent (25%) in amount of the bonds secured hereby then outstanding shall request such action, and unless the Trustee shall have first been reasonably indemnified.

Section 3. Nothing expressed or mentioned in or to be implied from this mortgage or deed of trust or the bonds issued hereunder is intended or shall be construed to give to any person or corporation or company other than the

parties hereto and the holders of bonds and coupons secured hereunder, any legal or equitable right, remedy or claim, under or in respect to this mortgage or deed of trust or any covenants, conditions or provisions herein contained; the covenants, conditions and provisions hereof intended to be and being for the sole and exclusive benefit of the parties hereto and the holders of the bonds and coupons secured hereunder.

Section 4. Except when otherwise indicated, the words, "the Trustee," or any other equivalent term, shall be held and construed to mean the Trustee for the time being hereunder, whether original or successor; and the words "Trustee," "Bond," or "Bondholder," shall mean the plural as well as the singular number; the words "Property," "Trust Property" or "Trust Estate" shall where not inconsistent with the context and unless otherwise expressly provided in this mortgage or deed of trust, be held and construed to include real and personal property of the Trustor of every kind and nature whatever that is subject to the lien of this mortgage or deed of trust.

Section 5. In order to facilitate the recording and indexing of this mortgage or deed of trust as a deed, trust deed, mortgage, chattel mortgage and power of attorney, the same may be simultaneously executed in two or more counterparts each of which so executed shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

Section 6. The Term "Sutherlin-Barry & Company, Inc.", when used in this mortgage or deed of trust, is hereby defined to mean the present Louisiana corporation of that name, and its successors and assigns, including any corporation into which or with which it or such successor or successors may be merged or consolidated.



ARTICLE X.  
CONCERNING THE BONDHOLDERS.

Section 1. All rights of action on or because of the bonds issued hereunder or the interest coupons thereto appertaining and all rights of action under this mortgage or deed of trust are hereby expressly declared to be vested exclusively in the Trustee, except only as hereinafter provided; and such rights may be enforced by the Trustee without the possession of any of the bonds issued hereunder or the interest coupons thereto appertaining. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, and any recovery or judgment shall be for the pro rata benefit of the holders of bonds issued hereunder and the interest coupons thereto appertaining.

Section 2. Any request, direction, resolution or other instrument required by this mortgage or deed of trust to be signed and executed by the bondholders may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bond holders in person or by attorney or agent appointed in writing. Proof of the execution of any such request, direction, resolution or other instrument, or of the writing appointing any such attorney or agent, and of the ownership of bonds, if made in the following manner, shall be sufficient for any purpose of this mortgage or deed of trust and shall be conclusive in favor of the Trustee with regard to due action taken by it under such request;

(a) The fact and date of the execution by any person of any such writing or instrument may be proved by the certificate of any officer in any jurisdiction, who by the laws thereof has power to take acknowledgements within

said jurisdiction, certifying that the person signing such writing or instrument acknowledged before him the execution thereof.

(b) The fact of the holding of bonds by any person executing any instrument as bondholder and the amount and issue number of any such bonds, and the date of his holding the same may be proved by certificate executed by any bank or trust company in the United States, wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such bank or trust company the bonds described in such certificate.

Section 3. No holder of any bond or coupon secured hereby shall have the right to institute any suit, action or proceeding at law or in equity, upon or in respect of this mortgage or deed of trust or of the bonds or coupons secured hereby or for the execution of any trust or power hereof or for the appointment of a receiver or for any other remedy under or upon this mortgage or deed of trust, unless such holder shall previously have given to the Trustee written notice of an event of default; and unless also the holders of twenty-five per cent (25%) in amount of the bonds secured hereby then outstanding shall have made written request upon the Trustee and shall have afforded to it a reasonable opportunity either to proceed itself to exercise the power hereinbefore granted, or to institute such action, suit or proceedings in its own name, and unless also such holders shall have offered to the Trustee reasonable security and indemnity against costs, expenses and liabilities to be incurred in or by reason of such action, suit or proceedings and the Trustee shall have refused or neglected to comply with such request within

a reasonable time thereafter. Such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this mortgage or deed of trust and to any action or cause of action for foreclosure or for any other remedy hereunder, anything herein to the contrary notwithstanding.

It is understood, intended and hereby provided that no one or more holders of bonds or coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this mortgage or deed of trust by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings hereunder shall be instituted, had and maintained in the manner herein provided for the equal benefit of all holders of such outstanding bonds and coupons. Provided, however, that nothing contained herein shall defeat the right of an individual bondholder to pursue his legal or equitable remedy where his right of action arises out of collusion, fraud, gross negligence or wilful misconduct.

ARTICLE XI.  
DEFEASANCE.

Section 1. Unless and until one or more of the events of default shall have happened, as hereinbefore specified, the Trustor shall possess and enjoy the property hereby mortgaged or deeded in trust with the appurtenances and all and singular the rights and franchises hereinbefore described, and receive, take, use and enjoy the tolls, income, earnings, rents, issues and profits thereof; but the Trustor covenants and agrees that she will first pay from such income, after paying expenses of operating and maintain-

ing said properties and the taxes and insurance thereon, the interest accruing and maturing upon the bonds issued hereunder, and provide for the payment of the principal of said bonds in the manner provided in Articles III, IV and V. hereof.

Section 2. If, when the bonds secured hereby shall become due and payable, the whole amount of the principal and interest due or accrued upon all of the bonds secured hereby then outstanding shall be paid or such amount shall be provided for by depositing with the Trustee hereunder, for the payment of such bonds, the entire amount due and to become due thereon for principal and interest, and the Trustor shall also pay or cause to be paid all other sums payable hereunder, and shall well and truly keep, perform and observe all things herein required to be kept, performed and observed by her according to the true intent and meaning of this mortgage or deed of trust; then, and in that case, all the property, premises, rights and interests hereby conveyed shall revert to the Trustor or to whomsoever may be entitled thereto; and the estate, right, title and interest of the Trustee therein shall thereupon cease, terminate and become void, and the Trustee shall, in such case, on demand of the Trustor and at the latter's cost and expense, enter satisfaction and discharge of this mortgage or deed of trust upon the public records.

## ARTICLE XII.

### PROVISIONS CONTRARY TO LAW.

If any one or more of the provisions, powers, covenants or agreements provided in this mortgage or deed of trust on the part of the Trustor or the Trustee to be performed or otherwise should be contrary to any express provisions

of law, or contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals, or against public policy, then such power, provision, covenant or covenants, agreement or agreements, shall be null and void, and shall be deemed separable from the remaining provisions, powers, covenants and agreements, and shall in no way effect the validity of this mortgage or deed of trust.

IN WITNESS WHEREOF, the Trustor has hereto set her hand and seal, and the Trustee has caused this agreement to be executed on its behalf by its officers thereunto duly authorized, and its corporate seal hereunto be affixed, as of the day and year first above written.

GRACE E. LOW (SEAL)  
CITIZENS TRUST AND SAVINGS BANK

By.....  
.....President

Attest:

By.....  
Assistant Secretary

STATE OF CALIFORNIA,     )  
  ) SS.  
COUNTY OF LOS ANGELES, )

On this 18th day of September, 1925, before me, NELLIE LEMERT, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared GRACE E. LOW, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.





STATE OF CALIFORNIA, )  
 ) SS.  
COUNTY OF LOS ANGELES, )

GRACE E. LOW, being first duly sworn, deposes and says:

That she is the party of the first part in the within instrument, and that said instrument is made in good faith and without any design to hinder, delay or defraud creditors.

GRACE E. LOW

Subscribed and sworn to before me this 18th day of Sept. 1925.

NELLIE LEMERT  
Notary Public in and for the County of  
Los Angeles, State of California. (Seal)

STATE OF CALIFORNIA, ( )  
 ( SS.  
COUNTY OF LOS ANGELES, )

..... and ..... being duly sworn, each for himself deposes and says: That said .....is the .....President and said .....is the Assistant Secretary of Citizens Trust & Savings Bank, party of the second part to the within instrument, and that said instrument is made in good faith and without any design to hinder, delay or defraud creditors.

.....  
.....

Subscribed and sworn to before me this.....day of ....., 1925.

.....  
Notary Public in and for the County of  
Los Angeles, State of California

## EXHIBIT "E"

Los Angeles, California,  
June 4, 1926.

Sutherlin-Barry & Co., Inc.,  
2505 West Sixth Street,  
Los Angeles, California.

Gentlemen:

You were the original purchasers from me of all of the Grace E. Low Properties First Mortgage Seven Per Cent Serial Gold Bonds which were duly issued and sold by me under the trust indenture from the undersigned, Grace E. Low, to Citizens Trust and Savings Bank, as Trustee, dated as of August 1st, 1925. I understand that you now own or represent more than a majority of said bonds.

Events of default have happened under said trust indenture and are now continuing and the Trustee thereunder has declared the principal of all of said bonds to be now due and payable and has advertised and posted notice of sale of the properties covered by said trust indenture to be held May 25, 1926, at the hour of 10 o'clock A. M. at the western front entrance of the Court House in the City of Los Angeles, State of California. Upon my request, approved by you, the Trustee duly adjourned such sale to be held at the same place on Tuesday, June 1st, 1926, at 10 o'clock A. M. and again at my request, approved by you, such sale was further adjourned to be held at the same place on Tuesday, June 8th, 1926, at 10 o'clock A. M.

Since the execution of said Trust indenture the income from the property covered thereby has decreased and for various reasons I have been unable to meet the accruing interest and sinking fund and other charges upon said bonds and under said trust indenture. I hope, however,

soon to be able to negotiate a supplementary loan secured by all or part of said property and with the proceeds thereof to make all payments at the time due under said trust indenture except payments for the principal amount of bonds which have been declared due pursuant to the terms thereof and to obtain clear title to the furniture and equipment now in or upon the property described in said trust indenture as parcel 1.

It is very difficult to complete these negotiations at the present time because of the fact that the time of appeal for the plaintiff in the case of Reynolds v. Low (which affects the title to these properties) has not yet expired. I realize that the defaults under the above mentioned trust indenture have been long continuing and I recognize the right of the Trustee thereunder to cause the sale of the properties covered thereby to be made on June 8th, 1926, and also your right to require such sale to be made at that time. I realize also that if such sale is further postponed the interest and other charges accruing upon said bonds and under said trust indenture will increase in substantial amounts in proportion to the length of such postponement.

You have, however, expressed your willingness to afford me every opportunity to save my interest in the property and to avoid a sale or foreclosure so far as such concessions are not, in your opinion, inconsistent with your responsibility to your stockholders and creditors and to the bondholders and, in view of such expressions, I wish to submit to you the following proposal:

1. You will agree to use your best efforts to bring about a postponement of the above mentioned Trustee's sale until August 1, 1926;

2. In consideration of such agreement and in consideration of such postponement of sale, if such postponement be effected, I agree—

(a) To appoint at once, and keep in office as long as my default under said trust indenture shall continue, at my expense and as my agent and upon my responsibility a manager or superintendent satisfactory to you with general charge and authority over the management of the properties subject to said trust indenture, which manager and superintendent shall be instructed to apply as much of the net earnings hereafter accruing from said properties as shall be necessary for that purpose to the payment of the balance of a certain note (not over \$500) owing by me to.....Lowe and to deposit all of the balance of such moneys with the Trustee under the above mentioned trust indenture to be held and applied by it as provided in Article IV of said trust indenture, it being understood, however, that no such deposit or application of such moneys shall be construed as curing any default existing under said trust indenture or as affecting the declaration of maturity of bonds made thereunder or the above mentioned notice and posting of sale. Such manager or superintendent shall be removed at any time upon your written request and replaced by another satisfactory to you;

(b) That I shall use my best efforts (1) to cause to be deposited with the Trustee under said trust indenture a sum equal to all moneys that are due thereunder and shall be due thereunder at the time of such deposit, other than the principal amount of bonds the maturity of which has been accelerated by declaration; (2) to cause to be deposited with the Trustee under said trust indenture sufficient moneys to cover the three monthly payments pro-



vided in ARTICLE IV thereof to be made on August 15, September 15, and October 15, 1926; (3) to acquire and cause to be subjected to a first lien or charge to secure the above mentioned bonds, (in a manner to be approved by you), all of the personal property now constituting the furniture and equipment in or upon the property described as parcel 1 in said trust indenture (other than such furniture, and equipment as is now owned by the individual occupants of rooms or apartments in said property); and (4) to cause you to be reimbursed for attorneys' fees up to the amount of twelve hundred dollars (\$1200) paid or incurred by you in connection with the defaults under said trust indenture, and that if all of the matters provided for in the above clauses (1), (2), (3), and (4) shall not have been duly accomplished and completed on or before August 5, 1926, that then I shall make no objection, and shall not allow any objection to be made on my behalf, to the immediate sale or foreclosure by the Trustee under said trust indenture of any or all of the property covered thereby, and I further agree that if you bid and are the purchaser at such sale, and in connection with such purchase shall have bid a sum not less than the amounts then due under said trust indenture, or shall have caused those entitled to moneys thereunder to have waived their rights to an action for any deficiency against me, that I will at the time of such sale or immediately thereafter, execute and deliver to you, or your nominee, a proper grant deed or conveyance transferring to you, or your nominee, all the interest which I have now and all that I shall have at that time in the property covered by such indenture. I shall, however, retain my right to the surplus of the proceeds of sale which may be due me as Trustor under the provisions of

said trust indenture in the event that your successful bid is higher than all amounts at the time due under said trust indenture. I further agree that in the event of such purchase by you I shall forthwith surrender possession to you or your nominee of all of the property so purchased.

(3) In the event that I comply with my agreements under subdivision (a) of paragraph 2 above, and duly cause to be accomplished and completed the matters provided for in subdivision (b) of said paragraph 2 you will agree to use your best efforts to bring about another postponement of the above mentioned Trustee's Sale until October 6, 1926, and if on that date there shall be on deposit with the Trustee, to be applied in accordance with the provisions of Article Iv of said trust indenture, sufficient moneys to cover the monthly payments provided in Article IV of the above mentioned trust indenture to be made on November 15, December 15, 1926 and January 15, 1927, and no moneys shall be due and owing under said trust indenture except in respect of the principal of bonds, the maturity of which has been accelerated by declaration, then you will use your best efforts to cause to be rescinded the declarations by which the maturity of bonds now outstanding under said trust indenture has been accelerated.

4. This agreement shall not in any affect the rights of the Trustee under said trust indenture nor lessen the obligations of the Trustor thereunder.

Your acceptance of the above proposition will be effected by your execution of your endorsement affixed below.

Yours very truly,

GRACE E. LOW

Accepted and agreed to this 4 day of June, 1926.

SUTHERLIN-BARRY & CO., INC.

By JNO E SUTHERLIN

President

[Endorsed]: Filed Nov. 19, 1928 R. S. Zimmerman,  
Clerk, by M. L. Gaines Deputy Clerk.

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[TITLE OF COURT AND CAUSE.]

### SUMMONS

Action brought in the said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Los Angeles, County of Los Angeles, State of California.

The President of the United States of America, Greeting:

To Sutherlin, Barry & Company, Inc., and John E.  
Sutherlin,

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the District Court of the United States, in and for the Southern District of California, Southern Division and to file your plea, answer or demurrer, to the complaint filed therein (a copy of which accompanies this summons), in the office of the Clerk of said Court in the City of Los Angeles, County of Los Angeles, State of California, within twenty days after the service on you of this summons, or judgment by default will be taken against you, and you are hereby notified that unless you appear and plead, answer or demur, as herein required, the plaintiff will take judgment for any money or damages demanded in the complaint as arising

from contract or will apply to the Court for any further relief demanded in the complaint.

WITNESS, the Honorable Paul J. McCormick  
 Judge of the District Court of the United  
 States in and for the Southern District of  
 California, this 19th day of November, in the  
 [Seal] year of our Lord one thousand nine hundred  
 and twenty-eight and of our Independence the  
 one hundred and fifty-third.

R. S. ZIMMERMAN, Clerk.  
 By M. L. Gaines, Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE, }  
 Southern District of California. }

I HEREBY CERTIFY, that I received the within writ on the 19th day of November 1928, and personally served the same on the 19th day of November 1928, by delivering to and leaving with John E. Sutherlin, and H. L. Dunn, Agent of Sutherlin, Barry & Company, Inc., said defendant named therein, personally at the County of Los Angeles in said District, a certified copy thereof, together with a copy of the Complaint, certified to by.....attached thereto.

Marshal's Fees	\$4.00
Mileage	\$
Expenses	\$
Total	\$4.00

Los Angeles, Cal.  
 November 19th, 1928.

A. C. Sittel  
 U. S. Marshal.  
 By Charles E. Rice  
 Deputy.

[Endorsed]: Filed Nov. 21, 1928. R. S. Zimmerman,  
 Clerk By M. L. Gaines, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

## DEMURRER

Defendant, Sutherlin, Barry & Company, Inc., demurs to the complaint herein on file upon the following grounds:

### I.

That said complaint does not state facts sufficient to constitute a cause of action against said defendant, Sutherlin, Barry & Company, Inc.

### II.

That there is a misjoinder of parties defendant, in that said Sutherlin, Barry & Company, Inc., is made defendant in said action.

### III.

That, in said complaint, several causes of action have been improperly united or not separately stated, in that said alleged complaint purports to set forth a scheme or design whereby said defendants, or either or both of them, deprived plaintiff of certain real property and also purports to state a cause of action for the alleged conversion of certain personal property and for the alleged loss of income to plaintiff from the use of said real and personal property.

### IV.

That said complaint is ambiguous in that:

(a) It is impossible to ascertain therefrom whether the purported cause of action, or actions, sound in law or in equity; and

(b) It is impossible to ascertain therefrom whether the purported cause of action, or actions, set forth a claim or claims against said defendants and each of them or solely against said corporate defendant.



## V.

That said complaint is uncertain in each of the respects in which it is hereinbefore alleged to be ambiguous.

WHEREFORE, this defendant prays the judgment of this Honorable Court whether this defendant shall be compelled to make further or any answer to said complaint and prays to be hence dismissed with his reasonable costs in this behalf sustained.

L. R. Martineau Jr.

Joseph L. Lewinson

Attorneys for Defendant, Sutherlin, Barry &  
Company, Inc.

We, Joseph L. Lewinson and L. R. Martineau, Jr., do hereby certify that we are counsel for said defendant, Sutherlin, Barry & Company, Inc., in the above-entitled action, and that in our opinion the foregoing demurrer is well founded.

L R Martineau Jr.

Joseph L Lewinson

[TITLE OF COURT AND CAUSE.]

MEMORANDUM OF AUTHORITIES IN SUPPORT  
OF DEMURRER OF SUTHERLIN, BARRY &  
COMPANY, INC., TO COMPLAINT.

Code of Civil Procedure of California, Secs. 427  
and 430;

Hurt v. Hollingsworth, 100 U. S. 100, 25 L. Ed.  
569;

Lindsay v. Shreveport Bank, 156 U. S. 485, 15 S.  
Ct. 472, 39 L. Ed. 505;

Lantry v. Wallace, 182 U. S. 536, 21 S. Ct. 878,  
45 L. Ed. 1218.

L R Martineau Jr

Joseph L Lewinson

Attorneys for Defendant, Sutherlin, Barry  
& Company, Inc.

[Endorsed]: Received copy of the within instrument  
this 21st day of January 1929 Ewell D. Moore & D. A.  
Knapp Attorneys for Plaintiff. Filed Jan. 21, 1929. R.  
S. Zimmerman, Clerk, By Edmund L. Smith, Deputy  
Clerk

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[TITLE OF COURT AND CAUSE.]

DEMURRER

Defendant, John E. Sutherlin, demurs to the complaint  
herein on file upon the following grounds:

I.

That said complaint does not state facts sufficient to  
constitute a cause of action against said defendant John E.  
Sutherlin.

II.

That there is a misjoinder of parties defendant, in that  
said John E. Sutherlin is made defendant in said action.

III.

That, in said complaint, several causes of action have  
been improperly united or not separately stated, in that  
said alleged complaint purports to set forth a scheme or  
design whereby said defendants, or said defendant cor-  
poration, deprived plaintiff of certain real property and  
also purports to state a cause of action for the alleged

conversion of certain personal property and for the alleged loss of income to said plaintiff from the use of said real and personal property.

## IV.

That said complaint is ambiguous in that:

(a) It is impossible to ascertain therefrom whether the purported cause of action, or actions, sound in law or in equity; and

(b) It is impossible to ascertain therefrom whether the purported cause of action, or actions, set forth a claim or claims against said defendants and each of them or solely against said corporate defendant.

## V.

That said complaint is uncertain in each of the respects in which it is hereinbefore alleged to be ambiguous.

WHEREFORE, this defendant prays the judgment of this Honorable Court whether this defendant shall be compelled to make further or any answer to said complaint and prays to be hence dismissed with his reasonable costs in this behalf sustained.

L R Martineau Jr  
Joseph L Lewinson  
Attorneys for Defendant, John E. Sutherlin.

We, Joseph L. Lewinson and L. R. Martineau, Jr., do hereby certify that we are counsel for said defendant John E. Sutherlin in the above-entitled action, and that in our opinion the foregoing demurrer is well founded.

L R Martineau Jr  
Joseph L Lewinson



set forth in the complaint herein on file; that said actions and suits are as follows, to-wit:

(a) Low vs. Sutherlin Barry, et al, in the above entitled Court, Docket No. 2835 J, dismissed by plaintiff after having been given leave to amend by Hon. William P. James, Judge of the above entitled Court;

(b) Low vs. Sutherlin Barry, et al, in the above entitled Court, Docket No. M 83 J, dismissed on defendants' motion without leave to amend;

(c) Low vs. Sutherlin Barry & Company, et al, in the above entitled Court, Docket No. M 84 J, dismissed on defendants' motion without leave to amend;

(d) Low vs. Sutherlin Barry & Company, in the above entitled Court, Docket No. 2814 H, pending on appeal;

(e) The above entitled cause No. 3324 M;

That reference is hereby made to the records and files in the above mentioned causes of action and the same are hereby made a part of this affidavit as fully as if set forth herein in full.

L. R. Martineau Jr.

Subscribed and sworn to before me this 21st day of March, 1929.

R. S. Zimmerman, Clerk U. S. District Court, Southern District of California By Edmund L. Smith Deputy

[Endorsed]: Received copy of the within this 26 day of March 1929 E. D. Moore, D. A. Knapp, John H. Bradley Attorney for plf Filed Mar. 27, 1930. R. S. Zimmerman Clerk, by Edmund L. Smith, Deputy Clerk.





sidered by the Court, this affiant and his associate counsel respectfully request that this affidavit be considered.

Ewell D. Moore

Subscribed and sworn to before me this 28th day of March, 1929.

[Seal]

Anne Dunderdale

Notary Public in and for the County of Los Angeles,  
State of California.

21 Cal. Juris. Sec. 61 and Sec. 62, page 94.

[Endorsed]: Received copy of the within Counter Affidavit, this 29th day of March, 1929. Joseph L. Lewinson, L. R. Martineau Jr. Attorneys for Defendants. Filed Mar 29, 1929. R. S. Zimmerman, R. S. Zimmerman, Clerk.

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At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 29th day of March in the year of our Lord one thousand nine hundred and twenty-nine.

Present:

The Honorable FRANK H. NORCROSS, District Judge.

Grace E. Low,	Plaintiff,	)	
	Vs.	)	
Sutherlin, Barry & Co., and		)	No. 3324-M Civil.
John E. Sutherlin,		)	
	Defendants.	)	

The Demurrer of defendants are sustained upon the first ground thereof that said Complaint does not state facts sufficient to constitute a cause of action. Plaintiff is allowed twenty days in which to file an Amended Complaint

if she is so advised, and defendants are allowed twenty days to answer or otherwise plead to the Amended Complaint, if and when filed.

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[TITLE OF COURT AND CAUSE.]

FIRST AMENDED COMPLAINT  
(In Damages)

Leave of Court being first had and obtained, plaintiff files this her First Amended Complaint, and for cause of action against the defendants alleges:

I.

That jurisdiction of this case arises and is conferred on this Honorable Court by reason of the diversity of citizenship of the parties. That the plaintiff Grace E. Low, is a citizen of the State of California and a resident of the County of Los Angeles; that the defendant John E. Sutherlin, is a citizen of the State of Louisiana, and the defendant Sutherlin, Barry & Company, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana and authorized to and is doing business in the State of California.

II.

That on and prior to June 29, 1925, plaintiff was the owner in fee of two certain parcels of real property, one of which is situated in the City of Los Angeles, and the other in the City of Venice, both in the County of Los Angeles, State of California; the property located in Los Angeles being described as follows:

That portion of Lots 12, 13 and 14, in Block 108, of Bellevue Terrace Tract, in the City of Los Angeles,

County of Los Angeles, State of California, as per map recorded in Book 2, page 585, Miscellaneous Records of said County, described as follows:

Beginning at a point in the Northerly line of Fifth Street, distant 65 feet Easterly from its intersection with the Easterly line of Hope Street; thence Easterly along said line of Fifth Street, 85 feet to its intersection with the Westerly line of a 12 foot alley (so-called); thence along said Westerly line, Northerly and parallel with the Easterly line of said Lots 12, 13 and 14, 142 feet; thence Westerly parallel with the Northerly line of Fifth Street, 85 feet; thence Southerly 142 feet to the point of beginning;

Together with the improvements thereon consisting of a six-story and full basement, Class "A" reinforced concrete apartment hotel in good repair, having 212 rooms subdivided as follows:

Twelve (12) double apartments consisting of living room and dining room, each equipped with double disappearing beds, kitchen and bath; seventy-five (75) single apartments consisting of combination living and dining room containing one double disappearing bed; kitchen and bath; and seven (7) transient hotel rooms;

The property located in Venice being described as follows:

Lots "P" and "R" of Venice of America, in the City of Venice, County of Los Angeles, State of California, as per map recorded in Book 6, Pages 126 and 127 of Maps, in the office of the County Recorder of said County, which property consists of approximately three acres of land, and on which are located twenty-seven (27) single cottages, three (3) double cottages, one (1) store and a garage of

fourteen (14) stalls, all being of frame construction and in good state of repair;

Said property first above described is sometimes hereinafter referred to as the "Engstrum Property", and the property located in Venice is sometimes hereinafter referred to as the "Venice Property".

III.

That at all times herein mentioned defendant, Sutherlin, Barry & Company, Inc., was, and still is, a corporation engaged in the business of financing, dealing in and selling investment bonds and underwriting issues of the same, and defendant, John E. Sutherlin, at all times herein mentioned was and still is, the president and manager thereof and the principal stockholder therein, and as such carried out all of the acts and things herein complained of for and on behalf of himself and said defendant corporation.

IV.

That prior to said June 29, 1925, defendants by and through defendant John E. Sutherlin, with the intent and purpose of developing and perfecting a scheme whereby plaintiff would be wrongfully deprived of her said property and the whole thereof by defendants without any consideration whatsoever, did begin and thereafter continue a series of steps hereinafter set forth in the order and effect thereof as follows:

That as the first step in the development of said scheme aforesaid, said defendants upon their own initiative proposed to plaintiff in general terms a lending plan for the funding of the several obligations then existing against plaintiff, whereby defendant Sutherlin, Barry & Company, Inc., would take up and pay off all the then existing obligations against plaintiff's said Engstrum property, by means



of a bond issue under a Trust Indenture secured by plaintiff's said Engstrum property, said bonds to be sold to defendant Sutherlin, Barry & Company, Inc., and to be in the amount that might be found necessary to pay every obligation then existing against said Engstrum property; said bonds to bear interest at seven per cent. per annum, and to be payable as to both principal and interest in such amounts and at such periods of time over a term of years as plaintiff could safely undertake in full view of the actual and probable income of her said Engstrum property as determined by defendants. And to that end defendants proposed to plaintiff that they and each of them would utilize their wide and varied financial experience and would prepare for her a careful and conservative "set-up", upon which in all future negotiations plaintiff might safely act, as to the extent of the bond issue necessary to pay all her obligations inclusive of the interest and amortization payments on said bonds, together with all payments, charges and expenses necessary to the transaction, and at the same time defendants estimated the income which their experience and judgment and their investigation demonstrated she could and should obtain from her said Engstrum property, and represented to plaintiff that such income was reasonable and probable.

That plaintiff was without any business experience and particularly without experience as to such matters as bond issues and so stated to defendants, which fact defendants then and there well knew. That plaintiff was then and there and theretofore and at all times herein mentioned so greatly troubled by the physical collapse of her husband that she was not then possessed of even her normal ability to grasp, understand and appreciate the figures and statements presented to her by defendants, and so explained to

defendants, and that defendants conducted all of said negotiations knowing the truthfulness of plaintiff's representations of her harassment and worry as aforesaid.

V.

That as a second step in developing said scheme aforesaid, defendants by and through defendant John E. Sutherlin, did prepare and exhibit to plaintiff said "set-up", containing on the one hand the actual and probable income of plaintiff's said Engstrum property as estimated by defendants, projected over a term of years, and purporting to contain on the other hand all the charges, expenses, fees and costs, as well as the payments of interest and amortization payments to retire said bonds, over a term of fifteen years from the date of issuance thereof, all of which purported to show to plaintiff that she could safely enter into said proposal of defendants and pay all of the obligations she would assume thereunder; that thereupon and in furtherance thereof, defendants, by and through defendant John E. Sutherlin, falsely and fraudulently stated and represented to plaintiff that by reason of their said wide experience in the finance and bond business that they could and did guarantee the truth and accuracy of the said "set-up" and particularly that it contained all the charges, expenses, fees, interest, payments and costs plaintiff would be called upon to bear and to pay in said transaction; and that the money derived from the sale of said bonds would be sufficient for all the requirements of said transaction and provide a large sum additional which sum plaintiff would be required to use for the renovating and refurnishing of said Engstrum property in order that it might earn the income estimated by defendants in said set-up; that said defendants then and there well knew that in truth and

in fact there would be charges and expenses against plaintiff in said proposed transaction other than, and in addition to, the charges, expenses, fees, costs, interest and payments which said defendants had included in said "set-up" prepared by them and exhibited to plaintiff as aforesaid, and plaintiff alleges that the said set-up consisted of a series of figures and pencil memoranda on scratch paper, all prepared by defendant John E. Sutherlin acting for himself and his codefendant; that plaintiff at no time had possession of said set-up memoranda and no copy thereof was ever delivered to her, but that said set-up was designedly always retained by defendants. And plaintiff alleges that by reason of the facts last above alleged as to said set-up she is unable to be more definite and certain in regard thereto except that she alleges that the income of the said Engstrum Property as computed and stated by defendants in said set-up was greatly in excess of the income theretofore derived therefrom, and that the outlay required by defendants in order that plaintiff might safely enter into the said contemplated bond issue, as plaintiff thereafter ascertained, was greatly in excess of the amount represented in said set-up; and plaintiff further alleges that the statements and representations as to income and outlay, made by the said John E. Sutherlin for himself and for his codefendant, and contained in and based upon said set-up were false and untrue and that defendant John E. Sutherlin knew said statements and representations were false and untrue, and plaintiff alleges that she did not know that said statements and representations of defendants were false and untrue and that said John E. Sutherlin knew that plaintiff did not, and in her mental condition could not, comprehend and appreciate the im-

port and effect of said set-up and of said oral statements and representations based thereon or determine the truth thereof; and plaintiff alleges that she in good faith relied upon and acted upon the said false and fraudulent representations made by defendants in said set-up; and but for her reliance thereon would not have continued further in said negotiations.

That defendants well knew that there would not be any sum remaining after paying the charges and expenses, as aforesaid, for the use of plaintiff or to renovate and refurbish said Engstrum Property, and that defendants, by and through defendant John E. Sutherlin, made said statements and representations to plaintiff with the intent and for the purpose of deceiving and misleading plaintiff and inducing her to enter into the said transaction, and plaintiff in reliance thereon thereupon agreed to continue said negotiations with defendants on the basis of said representations and said "set-up."

## VI.

That as the third step in the development of said scheme defendants on or about April 22, 1925, prepared and presented to plaintiff a writing purporting to be a proposal or offer by plaintiff to defendant Sutherlin, Barry & Company, Inc., but which in truth and in fact was defendants' proposal to plaintiff, to pay her obligations against said Engstrum Property, and to that end to issue and sell to defendant Sutherlin, Barry & Company, Inc., First Mortgage Seven Per Cent Bonds and secure the same by a Trust Indenture covering plaintiff's said Engstrum Property; and then and there defendants, by and through defendant John E. Sutherlin, falsely and fraudulently stated to plaintiff that the said writing of April 22, 1925, in its

full effect contained all of the oral proposals submitted by defendants to plaintiff as aforesaid, and in its full effect contained the substance and full purport of the said "set-up" as to the said Engstrum Property; that defendants made said statements last alleged to plaintiff knowing them to be false, with the intent and purpose of deceiving and misleading plaintiff and inducing her to execute the said writing, and knowing that plaintiff was ignorant of the true nature and effect of the statements in said purported proposal contained, and knowing also that plaintiff was wholly without financial experience and had no knowledge of the same and could not foresee the results thereof; that plaintiff relying upon defendants' oral statements and representations aforesaid, executed and delivered to defendants on said date said writing, a copy of which is attached hereto, made a part hereof, and marked Exhibit "A"; that immediately thereafter, plaintiff, in order to carry out her part of said transaction as stated by defendants and on the demands of defendants in the premises, incurred large initial expenses by virtue of defendants' said representations and of said writing (Exhibit "A") to meet which exhausted her financial resources, which defendants then and there and theretofore knew would result therefrom, and said expenses so incurred left plaintiff financially helpless to resist any further demands that might be made upon her in connection therewith, which fact defendants at all times had foreseen and calculated upon as a means to the ends hereinbefore alleged.

## VII.

That thereafter, and as the fourth step in further developing said scheme aforesaid and in conversation between plaintiff and defendant John E. Sutherlin acting for



and in behalf of himself and defendant Sutherlin, Barry & Company, Inc., it was orally agreed that the transaction under Exhibit "A" should be enlarged and extended to include plaintiff's said Venice real property, upon the same terms and conditions set forth in said "set-up," and in said proposal of April 22, 1925, (Exhibit "A") except as to the amount of the bonds to be issued and the interest and amortization payments thereon;

That thereafter, and on June 29, 1925, and subsequent to the incurring of heavy costs, expenses, charges and fees by plaintiff, as aforesaid, including the costs, expenses, charges and fees incurred by plaintiff incident to the inclusion therein of her said Venice Property as aforesaid, defendants, contrary to their express promises, statements and representations to plaintiff aforesaid, suddenly and on said June 29, 1925, demanded of plaintiff the payment of \$5900.00 in addition to and in excess of all other charges, costs, fees, expenses, interest and payments theretofore provided to be paid by her under said "set-up," and said proposal of April 22, 1925 (Exhibit "A"); that upon plaintiff's protests against said demand defendants, by and through defendant John E. Sutherlin, stated to plaintiff that unless she then and there agreed to pay said \$5900.00 defendants would immediately withdraw from said transaction in which event all the costs, expenses, charges and fees theretofore incurred by plaintiff as aforesaid, would be upon her shoulders; that by reason of said demand of defendants and the said large expenses, charges and fees theretofore incurred as aforesaid, and by reason of the fact that she had then pressing upon her the obligations of sundry creditors, the payment of whom could not be delayed to await some other plan of refinancing, plaintiff

was placed in a desperate and helpless financial situation, and in consequence thereof was forced to, and in conformity to defendants' scheme aforesaid, did accede to defendants' demands and signed the writing prepared and presented to her by defendants, agreeing to pay defendants said sum of \$5900.00, by therein authorizing said sum to be deducted from the proceeds of said bond issue, a copy of which said writing is attached hereto, made a part hereof and marked Exhibit "B". That in so doing however, defendants falsely and fraudulently stated to plaintiff that the payment of said \$5900.00 would be postponed until the excess of the proceeds from the sale of said bonds permitted the same to be paid without jeopardizing her financial safety in the premises.

That on said June 29, 1925, defendants, by and through defendant John E. Sutherlin, presented to plaintiff a further and second proposal previously prepared by said defendants, addressed to defendant Sutherlin, Barry & Company, Inc., enlarging and extending the said proposal of April 22, 1925, (Exhibit "A") to include plaintiff's said Venice real property as well as her said Engstrum Property, and providing for a Trust Indenture and the issuance of bonds thereunder in the sum of \$360,000.00, which plaintiff then and there executed and delivered to defendants, a copy of which is attached hereto, made a part hereof, and marked Exhibit "C".

#### VIII.

That prior to executing the said second proposal (Exhibit "C") as aforesaid, and on said June 29, 1925, plaintiff called the attention of defendants, and particularly of defendant John E. Sutherlin, to the provisions therein contained as to the insurance required to be placed and paid

for by plaintiff upon her said Engstrum and Venice Properties, and stated to said defendants that the insurance requirements therein set forth appeared to be in excess of the amount provided for in the said "set-up" as prepared by defendants and exhibited to plaintiff as aforesaid; that thereupon defendants, and particularly defendant John E. Sutherlin, falsely and fraudulently stated to plaintiff that the insurance then in force, and then paid for by plaintiff, upon all of her said properties, would be sufficient to meet the defendants' requirements in the premises, and that there would be no necessity for further insurance thereon except in a small amount, the cost of which would be paid out of the excess from said sale of said bonds over and above all the other costs, expenses, fees and payments provided for in said Trust Indenture, and that said additional costs for such additional insurance would be merely nominal, the payment of which would not work a hardship upon plaintiff, and that by reason of the fact that said expense for said additional insurance would be merely nominal, plaintiff would not only be able to pay the same from the aforesaid proceeds from the sale of said bonds but that plaintiff would also receive a substantial balance from the said proceeds of said sale of said bonds from which said balance plaintiff could pay all of the charges and expenses, and also pay the costs of the repairs, improvements and redecorations as provided in said proposal of June 29, 1925 (Exhibit "C") as well as the interest on said bonds as they became due; that plaintiff in reliance upon said statements and representations of defendants as aforesaid, was induced to and did execute the said proposal of June 29, 1925, (Exhibit "C") and did proceed to the further consummation of said transaction;

That notwithstanding said statements and representations of defendants to plaintiff as aforesaid, defendants then and there secretly agreed to and thereafter did saddle upon plaintiff additional insurance charges in the amount of \$3,275.95; that there was no balance due plaintiff from the sale of said bonds with which to pay said additional insurance charges and that said defendants and each of them at all times herein mentioned well knew that there would be no balance, and well knew that said charges for said additional insurance could not be paid by plaintiff from any balance from the sale of said bonds, and well knew that said charges for said additional insurance if unpaid by plaintiff would go far toward creating a default by plaintiff by reason of which defendants could bring about the sale of plaintiff's said properties to defendant Sutherlin, Barry & Company, Inc; that said representations of defendants aforesaid were in direct contravention to the representations theretofore made by defendants to plaintiff, as aforesaid.

#### IX.

That thereafter, and as the fifth step in the aforesaid scheme, defendants prepared and by defendant John E. Sutherlin, submitted to plaintiff a form of Trust Indenture covering all of plaintiff's said real property herein described, and at or about the same time prepared and presented to plaintiff, and which plaintiff executed, an application to the Corporation Commissioner of the State of California for a permit to issue and sell to defendant Sutherlin, Barry & Company, Inc., the bonds provided for under said Trust Indenture in the sum of \$360,000, and defendants thereupon placed the entire transaction in escrow with the Citizens Trust & Savings Bank of Los Angeles, California, the Trustee named in said Trust In-

denture. That thereafter, and upon August 12, 1925, a permit was issued by said Corporation Commissioner authorizing plaintiff to sell and issue to defendant Sutherlin, Barry & Company, Inc., said bonds in said amount of \$360,000 at ninety cents on the dollar, all subject to and under the conditions of the said Trust Indenture, a copy of which is attached hereto, made a part hereof and marked Exhibit "D".

That the said application for said permit to issue and sell said bonds was prepared by defendants and that the entire proceedings thereto pertaining were carried on by said defendants, all without knowledge of plaintiff as to the details or practical purport thereof, and that said defendants at all times herein mentioned well knew that plaintiff did not have knowledge of such details or appreciate the practical purport thereof, and particularly that she had no comprehension or understanding of the ultimate effect of said permit, to-wit: that the sale of said bonds thereunder would result in a bonus to defendant Sutherlin, Barry & Company, Inc., in the sum of \$36,000 and that plaintiff would thus be deprived of said sum from the proceeds of the sale of said bonds; that at all times defendants well knew that plaintiff believed and understood that she was merely borrowing the money from defendant, Sutherlin, Barry & Company, Inc., and that said bonds were her promise to pay and that she believed her transaction was personal to defendants and subject to no bonus nor charges save as any private loan under the statutes made and provided might be subjected.

X.

That as the sixth step in the development of said scheme aforesaid and on September 23, 1925, and at the time fixed



for the closing of said escrow at said Citizens Trust & Savings Bank, and at which time the said Trustee had notified the parties hereto that there would be a balance of but Fifty Dollars in favor of plaintiff from the proceeds of the sale of said bonds to defendant Sutherlin, Barry & Company, Inc. after meeting the charges, costs, expenses and fees in said transaction incurred, (the Trustee not referring however, to the insurance charges set up in paragraph VIII. herein) said defendants, well knowing plaintiff had no means so to do and in direct contravention to their promises theretofore to plaintiff made and upon which she relied, by and through defendant John E. Sutherlin suddenly demanded of plaintiff the immediate and unconditional payment of the said sum of \$5,900.00 heretofore referred to, and defendants then and there by and through defendant John E. Sutherlin, declared that unless said \$5,900.00 was immediately settled by plaintiff in the manner and form by them demanded, they, the defendants, would refuse to go further in said transaction and would leave to plaintiff the payment of all the charges, expenses and costs theretofore provided for in said proposal of June 29, 1925, which plaintiff had incurred in good faith, and any and all other items of expense charged or chargeable to plaintiff in the premises; that the manner and form of settlement of said charge of \$5,900.00 thus demanded by defendants was as follows: that plaintiff execute two promissory notes in the sum of \$2,950.00 each, payable in 90 and 120 days respectively, with interest thereon at 7% and 6% respectively, per annum; that plaintiff being driven by the extremities of her financial condition by long deferred debts to creditors to which she would be subject to drastic measures, all of which defendants well knew

and had carefully contemplated from the beginning, and solely by reason of the facts hereinabove set forth thereupon did execute and deliver said two promissory notes to defendants.

That thereafter defendant Sutherlin, Barry & Company, Inc., sold one of said promissory notes to a purported innocent purchaser who sued plaintiff thereon, and garnished a large number of plaintiff's tenants occupying said Engstrum Property, thereby resulting in the vacating by such persons of plaintiff's said premises and the consequent and continuing curtailment of plaintiff's income therefrom;

That at all times herein mentioned defendants intended, designed and contemplated the results of their aforesaid acts, to-wit: that plaintiff would be deprived of a large part of her ordinary income from her said Engstrum Property and would be unable to increase the income of the said property in accordance with the said set-up; that defendants well knew by reason thereof plaintiff would default in the payment of the charges and expenses under said Trust Indenture and the interest on said bonds, and thereby would provide defendants with an excuse to declare a default thereunder and to demand that said Trustee sell all of plaintiff's said properties under said Trust Indenture, in order that defendant Sutherlin, Barry & Company, Inc. might buy said properties at said sale and secure the same to themselves without consideration to plaintiff for her interest therein.

That said results to plaintiff did in fact follow the aforesaid acts of defendants and plaintiff was in fact thereby deprived of a large part of her income theretofore received from said Engstrum Property and was utterly un-

able to inaugurate new plans for increasing the same: that plaintiff was in fact prevented from paying the charges, costs and expenses placed against her by defendants in connection with said transaction aforesaid, and was in fact thereby prevented from paying the interest on said bonds as and when the same became due, and plaintiff, as a consequence thereof, was thereby and thereafter deprived of her said real property and the whole thereof, as the same existed in her prior to the said June 29, 1925.

#### XI.

That as the seventh step in the aforesaid scheme, defendant Sutherlin, Barry & Company, Inc., on December 23, 1925, notified plaintiff in writing that unless certain insurance premiums upon the additional insurance defendants required plaintiff to place upon her said property as aforesaid, were not immediately paid by plaintiff by way of reimbursement to the said Citizens Trust & Savings Bank, the Trustee, then the said defendant Sutherlin, Barry & Company, Inc. would at once elect to request said Trustee to declare the entire principal sum of said bonds, to-wit, \$360,000, due and payable and would take further steps appropriate in the premises; that said defendants and each of them well knew at the time of making said demand upon plaintiff, and well knew from the beginning of said transaction, that their said manipulations of the entire transaction affecting plaintiff's said properties under said Trust Indenture had made it impossible for plaintiff to immediately pay said insurance charges or to immediately pay the other charges, costs and expenses placed against plaintiff as aforesaid, or to immediately pay the interest then accruing on said bonds;

That thereafter and on March 1, 1926, the said Trustee, pursuant to the demand of said defendant Sutherlin, Barry & Company, Inc., served written notice upon plaintiff declaring plaintiff in default under the terms of said Trust Indenture, and further declaring the entire principal of said bonds, to-wit, \$360,000.00 immediately due and payable.

## XII.

That thereafter and as the eighth step in furtherance of said scheme, defendants prepared a form of proposal in writing purporting to be from plaintiff to defendant Sutherlin, Barry & Company, Inc., a copy of which is attached hereto and marked Exhibit "E"; which said proposal defendant John E. Sutherlin presented to plaintiff on June 4, 1926, and plaintiff, in reliance upon the statements of said defendant John E. Sutherlin as to the purport and effect thereof upon plaintiff's rights and interest in said properties, and induced wholly by said statements, did thereupon execute and deliver to defendants said proposal on said date, and defendant John E. Sutherlin accepted the same for and on behalf of defendant Sutherlin, Barry & Company, Inc. That said statements of defendant John E. Sutherlin made to plaintiff on said date and prior to her signing said proposal were: That if plaintiff in good faith would place and keep a manager at all times to be satisfactory to defendants, in charge of all of said real, and her personal property, said personal property consisting of the furniture and equipment upon said Engstrum Property, and surrender all of said property to the use of defendants to and until August 5th, 1926, and also would surrender to defendants all of the income therefrom, and cause all of her said personal property in or upon said real

property to be subjected to the same general lien created by said Trust Indenture, and reimburse defendants for alleged attorneys' fees in the amount of \$1200.00, defendants would as consideration therefor credit the said income from said properties to the payment requirements under the said Trust Indenture, and on said August 5, 1926, would cause the Trustee to postpone the sale of said real property then pending to October 6, 1926, and also would cause the said declaration of said Trustee accelerating the maturity of said bonds to be rescinded and thus restore the said real property to its former status under said Trust Indenture, provided, plaintiff would pay to the said Trustee prior to October 6, 1926, all of the sums necessary to cure the default theretofore declared to exist in said Trustee's notice, together with all charges, costs and expenses accrued at the date of such payment.

That plaintiff thereafter in good faith and in reliance on defendants' said promise and statements in the premises did all and singular the things by defendants stated that she would be required to do in order to secure a postponement of the sale of her said real property to October 6, 1926, including the placing of defendants' manager in charge of her said personal and real property and surrendering the income therefrom to defendants; but defendants thereafter in direct contravention of their said statements, representations and promises on said August 5, 1926, and at all times thereafter, failed and refused to cause the said Trustee to postpone the sale of said real property to October 6, 1926, and failed and refused to cause the Trustee to rescind its said declaration accelerating the maturity of the entire principal of said bonds and to restore said real property to the status existing prior



to said declaration of default under said Trust Indenture, all in spite of the fact that plaintiff upon the 12th day of August 1926, and prior to the sale of said properties had on said day, procured and presented to defendants a person, viz., Rodolfo Montes, ready, able and willing then and there and on said date, to pay to said Trustee all charges, costs, expenses and interest, except the principal sum of said bonds, declared by said Trustee to be due from plaintiff under said Trust Indenture or otherwise charged against her in the premises, and plaintiff alleges that the said Rodolfo Montes for and in behalf of plaintiff on August 12, 1926, and prior to the sale under the Trust Indenture, offered to pay all of the alleged delinquencies and defaults, except the principal sum of said bonds, if the sale would be postponed for one hour after 10 o'clock A. M. on said August 12, 1926, so as to give the said Montes an opportunity to get the money from his bank which did not open for business until 10 o'clock, but plaintiff alleges that the said John E. Sutherlin after knowing that the said Montes was ready, able and willing to make said payment and after having talked with said Montes in regard thereto, refused to direct or request the Trustee to postpone the sale for a few minutes in order to give the said Montes time to get the money from his bank, but instead directed the Trustee to proceed with the sale promptly at 10 o'clock which was done in spite of the great loss and damage which came to plaintiff by reason of such unreasonable and unwarranted conduct on the part of defendants, and in spite of the offer of the said Montes.

And plaintiff further alleges that at the time defendants by and through defendant John E. Sutherlin made said false and fraudulent representations to plaintiff, to-wit, on

June 4, 1926, relative to the postponement of said sale, defendants did not intend to postpone said Trustee's sale to October 6, 1926, and did not intend to cause the Trustee to rescind its said declaration accelerating the maturity of the entire principal of said bonds, and did not intend to cause said Trust Indenture to be restored to its original force and effect; and defendants and each of them well knew plaintiff relied upon their said false and fraudulent statements and representations of defendants relative to the postponement of said sale to October 6, 1926, as aforesaid; that plaintiff would not have surrendered the control of said real and personal property and the income therefrom as aforesaid, save and except in her said reliance upon the representations of defendants that said postponement of said sale to said October 6, 1926, would be made.

### XIII.

That at the time defendants made said false and fraudulent statements and representations to plaintiff as aforesaid, to-wit, on June 4, 1926, they, and each of them, well knew that in the event and upon the placing of the said manager, who in truth and in fact was the manager for defendant Sutherlin, Barry & Company, Inc., in charge of plaintiff's said property and allowing him to collect and take the income therefrom for said defendant Sutherlin, Barry & Company, Inc., that plaintiff would thereafter be thwarted and prevented from receiving her customary and usual income therefrom, and, said defendants and each of them purposed and intended at the time they made said false and fraudulent representations that plaintiff should never again come into control of her said real and personal property; that defendant Sutherlin, Barry & Company, Inc., upon the placing of said manager in control of plain-

tiff's said property and the income therefrom, so manipulated the same and so harassed and obstructed plaintiff that she was forced to, and did move off her said property and never thereafter came into possession of the same or of any income therefrom.

That defendants in utter disregard of their said agreement of June 4, 1926, to postpone the sale of said real property to October 6, 1926, as aforesaid, caused said sale to be postponed only to August 12, 1926, and did then and there and on said last date mentioned, cause said real property to be sold by said Trustee to defendant Sutherlin, Barry & Company, Inc.; that said sale was designed by said defendants to be held, and was in truth and in fact so held without opposing bidders and without an opportunity for opposing bidders to be present.

Plaintiff alleges that the first notice of declaration by Trustee of acceleration of principal sum of said bonds was served upon her April 5, 1926, and that the sale under said declaration was noticed for May 25, 1926; that the sale so noticed for May 25, 1926, was postponed to June 1, 1926, and again to June 8, 1926, and again to August 1, 1926, and then to August 12, 1926, at which time said sale was had as hereinbefore alleged. And plaintiff alleges that after the initial notice no further formal notice was by the Trust Indenture required, in the event the sale was postponed from the date fixed in the initial notice, but that postponements without further formal notice could be and were made by the Trustee who at all times proceeded according to the direction of defendants. And plaintiff states that it is her belief and therefore she alleges that defendants by and through defendant John E. Sutherlin, while pretending to be directing and consenting to the postpone-

ments in order to accomodate and assist plaintiff, were in fact directing and consenting to said postponements in order to hit upon a time and an occasion when there would be no opposing bidders present at the sale, which was accomplished as hereinbefore alleged.

Plaintiff further alleges that said defendants in utter violation of good faith and well knowing that the valuation of plaintiff's said real property as fixed in the appraisal caused to be made by defendant Sutherlin, Barry & Company, Inc., was in excess of \$650,000, caused said real property to be sold by said Trustee to defendant Sutherlin, Barry & Company, Inc., and defendant Sutherlin, Barry & Company, Inc., purchased said property at said sale for \$292,500. And plaintiff alleges that on August 12, 1926, the date when said properties were sold under the Trust Indenture said properties were of the reasonable value of \$750,000, and that defendant Sutherlin, Barry & Company, Inc. purchased said real property at said sale at the aforesaid price of \$292,500, with the intent and for the purpose of thereafter, and at its convenience, filing suit and obtaining a deficiency judgment against plaintiff in the premises, and of executing such judgment upon said personal property and the whole thereof, to the end that said defendant Sutherlin, Barry & Company, Inc. might secure to itself said personal property without consideration to plaintiff therefor.

#### XIV.

That at all times hereinbefore mentioned plaintiff was the owner of all and singular the personal property in and upon the real property herein described, to-wit, the said Engstrum and said Venice Properties; that said personal property consisted of complete household furniture, fur-

nishings and equipment ordinarily required and used in the apartment house and hotel business; that said furniture, furnishings and equipment was of the reasonable actual value to plaintiff of the sum of \$60,000.

That defendant Sutherlin, Barry & Company, Inc. ever since taking possession of said personal property as aforesaid, has exercised the rights of ownership therein and as plaintiff is informed and believes, and therefore alleges, has sold and otherwise disposed of said personal property and the whole thereof, all to plaintiff's damage in the sum of \$60,000.

#### XV.

That plaintiff heretofore demanded of defendants and each of them the return to plaintiff of said real and personal property and the whole thereof, or the value thereof, but defendants and each of them have ever refused and still refuse to return the same or any part thereof, and/or to pay to plaintiff the value or any part of the value thereof.

#### XVI.

That by reason of the said false and fraudulent promises and representations of defendants and each of them, and by reason of the said failure and refusal of defendants to carry out the said agreements as hereinbefore set forth, and by reason of the carrying out of their said general fraudulent scheme to deprive plaintiff of her said real property in the manner aforesaid, plaintiff was thereby deprived of all of her interest in said real property as the same existed prior to said June 29, 1925, all to her damage in the sum of \$750,000, less the sum of \$300,000 paid thereon by defendant Sutherlin, Barry & Company, Inc., in behalf of plaintiff, or the net sum of \$450,000; together with the value of plaintiff's said personal property in the sum of \$60,000 as aforesaid, or the total sum of \$510,000.





all of the exhibits attached to, made a part of and filed with the original complaint herein, need not be again filed with the first amended complaint herein, but may be considered as the exhibits referred to in the first amended complaint as "A," "B," "C," "D" and "E" respectively, and a part of said complaint.

Dated April 10th, 1929.

EWELL D. MOORE

D. A. KNAPP

and

JOHN H. BRADLEY

Attorneys for Plaintiff.

JOSEPH L. LEWINSON

and

L. R. MARTINEAU JR.

Attorneys for Defendants.

[Endorsed]: Received copy of the within first Amended Complaint this 13th day of April, 1929. L. R. Martineau Jr., Joseph L. Lewinson Attorneys for defendants. Filed Apr 13 1929 R. S. Zimmerman, Clerk  
By M L Gaines Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

DEMURRER OF SUTHERLIN, BARRY & COMPANY, INC.

Comes now the defendant Sutherlin, Barry & Company, Inc., and demurs to plaintiff's first amended complaint herein on file upon the following grounds:

## I.

That said first amended complaint does not state facts sufficient to constitute a cause of action against said defendant, Sutherlin, Barry & Company, Inc.

## II.

That there is a misjoinder of parties defendant, in that said Sutherlin, Barry & Company, Inc., is made defendant in said action.

## III.

That, in said first amended complaint, several causes of action have been improperly united or not separately stated, in that said alleged first amended complaint purports to set forth a scheme or design whereby said defendants, or either or both of them, deprived plaintiff of certain real property and also purports to state a cause of action for the alleged conversion of certain personal property.

## IV.

That said first amended complaint is ambiguous in that:

(a) It is impossible to ascertain therefrom whether the purported cause of action, or actions, sound in law or in equity; and

(b) It is impossible to ascertain therefrom whether the purported cause of action, or actions, set forth a claim or claims against said defendants and each of them or solely against said corporate defendant.

## V.

That said first amended complaint is uncertain in each of the respects in which it is hereinbefore alleged to be ambiguous.

WHEREFORE, this defendant prays the judgment of this Honorable Court whether this defendant shall be compelled to make further or any answer to said first amended

complaint and prays to be hence dismissed with its reasonable costs in this behalf sustained.

Joseph L. Lewinson  
L R Martineau, Jr.,  
Attorneys for Defendant, Sutherlin, Barry  
& Company, Inc.

We, Joseph L. Lewinson and L. R. Martineau, Jr., do hereby certify that we are counsel for said defendant, Sutherlin, Barry & Company, Inc., in the above-entitled action, and that in our opinion the foregoing demurrer is well founded.

Joseph L. Lewinson  
L. R. Martineau Jr.

[TITLE OF COURT AND CAUSE.]

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF DEMURRER OF SUTHER-  
LIN, BARRY & COMPANY, INC., TO FIRST  
AMENDED COMPLAINT

I.

The amended complaint does not state facts sufficient to constitute a cause of action against the defendant Sutherlin, Barry & Company, Inc:

1. Every private transaction is presumed to be fair, regular and free from fraud, a presumption which approximates in strength that of innocence of crime.

California Code of Civil Procedure, Sec. 1963,  
Par. 19;

Everett v. Standard Accident Ins. Co., 45 Cal. App.  
332, 187 Pac. 996;

Lyders v. Wilsey, 271 Pac. 383.

2. A demurrer does not admit facts pleaded which appear unfounded by a record incorporated or referred to in the pleading; where the complaint is at variance with material facts set out in the exhibits attached thereto, the latter control.

31 Cyc. 337;

Murray v. Murphy, 39 Miss. 214;

Williams v. Hanly, 116 Ind. App. 464, 45 N. E. 622;

Bush v. Madeira's Heirs, 14 B. Mon. 172, 53 Ky. 212;

Tec. Bi & Co., v. Chartered Bank of India, Australia and China, 41 Philippine Reports 596;

State v. Risty, 213 N. W. 952;

Anderson v. Inter-river Drainage Dist., 274 S. W. 448.

3. General charges of fraud are worthless; the facts constituting fraud must be alleged with great particularity and exactitude.

Church v. Swetland, 243 Fed. 289 (C. C. A. 2nd);

Cella v. Brown, 144 Fed. 742 (C. C. A. 8th);

Johnson v. Fletcher, 58 C. A. D. 674;

A. Plaintiff should have alleged definitely the items and amounts which she claimed were omitted from the "set-up" in order that their materiality might be ascertained.

Kranz v. Lewis, 100 N. Y. S. 674.

4. The mere existence of a scheme to defraud is not actionable in the absence of specific fraudulent acts.

Brown v. Wohlke, 166 Cal. 121, 135 Pac. 37;

Prudential Ins. Co. v. Mohr, 185 Fed. 936.



The mere fact that a lawful act is done with a dishonest or fraudulent motive, does not make the act unlawful; motive is immaterial.

Pollock on Torts, 2nd Ed. p. 23.

5. Mere expressions of opinion or representations promissory in character or relating to future events are not actionable.

*Sawyer v. Prickett*, 19 Wall. 146, 22 L. Ed. 105;

*Kimber v. Young*, 137 Fed. 744 (C. C. A. 8th);

*Mandelbaum v. Goodyear Tire Co.*, 6 Fed. (2nd) 818, (C. C. A. 8th);

*Pigott v. Graham*, 93 Pac. 435, 48 Wash. 348, 14 L. R. A. (N. S.) 1176.

A. This is particularly true where the opinions expressed related to plaintiff's ability to do certain things.

*Schwitters v. Des Moines Commercial College*, 199 Ia. 1058, 203 N. W. 265.

B. It is also particularly true where the opinions expressed related to matters susceptible to the test of simple mathematical computation.

*Henry v. Continental Bldg., & Loan Ass'n.*, 156 Cal. 667, 105 Pac. 960;

*Keithley v. Mutual L. Ins. Co.*, 271 Ill. 584, 111 N. E. 503;

*Warren v. Federal L. Ins. Co.*, 198 Mich. 342, 164 N. W. 449;

*Donoho v. Equitable L. Ass. Soc.*, 22 Tex. Civ. App. 192, 54 S. W. 645

C. The subject of the alleged misrepresentations being simple matters which anyone could find out for himself upon the slightest investigation, it became the duty of

plaintiff to avail herself of the means of informing herself; not having done so, she has only herself to blame.

2 Kent. Comm. 484;

*Slaughter v. Gerson*, 13 Wall 379, 20 L. Ed. 627;

*Beckley v. Archer*, 74 Cal. App. 598, 241 Pac. 422.

6. Even though fraud were alleged, plaintiff by her conduct has waived it.

12 Cal. Jur. 792.

A. When plaintiff discovered the alleged fraud, it became her duty, if she intended to go on with the contract, to deal at arm's length with the defendants; instead of that she asked and obtained favors and extensions to which she was not legally entitled; by this conduct she affirmed the contract, and waived the fraud.

*Schmidt v. Mesmer*, 116 Cal. 267, 48 Pac. 54;

*Hunt v. Field*, 81 Cal. App. 575, 254 Pac. 594;

*Ball v. Warner*, 80 Cal. App. 427, 251 Pac. 427;

*Holcomb & Hohe Mfg. Co. v. Jones*, 228 Pac. 568.

*Monahan v. Watson*, 61 Cal. App. 417, 214 Pac. 1001;

*Tucker v. Beneke*, 180 Cal. 588, 182 Pac. 299;

*Blydenburgh v. Welsh*, 3 Fed. Cas. 771; Case No. 1583;

*Schagun v. Scott Mfg. Co.*, 162 Fed. 209.

B. After plaintiff discovered the alleged fraud she made a new contract with respect to the subject matter and thus waived the fraud.

*Lee v. McClelland*, 120 Cal. 147;

*Ruhl v. Mott*, 120 Cal. 668.

C. The contract being largely executory at the time of the discovery of the alleged fraud, plaintiff should have taken action at once; by choosing to go on with the contract, she waived the fraud.

Kingman Co. v. Stoddard, 85 Fed. 740;

Simon v. Goodyear Met. Rubber S., Co., 105 Fed. 573;

Bement v. La Dow, 66 Fed. 185.

7. Plaintiff cannot avail herself of the excuse that she did not read the instruments or could not understand the transaction.

Dale v. Dale, 262 Pac. 339;

Uptown v. Tribilcock, 91 U. S. 45, 23 L. Ed. 203;

Chicago Rye Co. v. Belliwith, 83 Fed. 437 (C. C. A. 8th);

Kimmell v. Skelly, 130 Cal. 555.

8. The plaintiff did not rely upon representations alleged relative to the "set-up" because said "set-up" was merged into the loan agreement and trust indenture.

Van Weel v. Winston, 115 U. S. 228, 29 L. Ed. 384;

Andrus v. Smelting Co., 130 U. S. 643, 32 L. Ed. 1054;

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## II.

Misjoinder of parties defendant:

Code of Civil Procedure of California, Sec. 430;

Hurt v. Hollingsworth, 100 U. S. 100, 25 L. Ed. 569;

Lindsay v. Shreveport Bank, 156 U. S., 485, 39 L. Ed. 505;

Lantry v. Wallace, 182 U. S. 536, 45 L. Ed. 1218.

## III.

Several alleged causes of action are improperly united:  
Code of Civil Procedure of California, Section  
427.

## IV.

The demurrer should be sustained without leave to  
amend:

*Demartini v. Marini*, 45 Cal. App. 418, 187 Pac.  
985;

*Goebel v. Gregg*, 57 Cal. App. 651, 207 Pac. 917;

*Reios v. Mardis*, 18 Cal. App. 276, 122 Pac. 1091;

*Loeffler v. Wright*, 13 Cal. App., 224; 232-233;

*San Joaquin, etc., Co. v. County of Stanislaus*, 155  
Cal. 21, 29;

*Bell v. Bank of Calif.*, 153 Cal., 234, 244-5;

*Foss v. Peoples Etc. Co.* 89 N. E. 356 (Ill. Sup.)

Respectfully submitted,

Joseph L Lewinson

L R Martineau

Attorneys for Defendant, Suther-  
lin, Barry & Company, Inc.

[Endorsed]: Received copy of the within Demurrer and  
Brief. this 3 day of May 1929 E. D. Moore, D. A. Knapp  
& John H. Bradley Attorneys for Plaintiff. Filed May 3  
1929. R. S. Zimmerman, Clerk, by Edmund L. Smith,  
Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

DEMURRER OF JOHN E. SUTHERLIN.

Comes now the defendant John E. Sutherlin and demurs to plaintiff's first amended complaint herein on file on the following grounds:

I.

That said first amended complaint does not state facts sufficient to state a cause of action against said defendant John E. Sutherlin.

II.

That there is a misjoinder of parties defendant, in that said John E. Sutherlin is made defendant in said action.

III.

That, in said first amended complaint, several causes of action have been improperly united or not separately stated, in that said alleged first amended complaint purports to set forth a scheme or design whereby said defendants, or either or both of them, deprived plaintiff of certain real property and also purports to state a cause of action for the alleged conversion of certain personal property.

IV.

That said first amended complaint is ambiguous in that:

(a) It is impossible to ascertain therefrom whether the purported cause of action, or actions, sound in law or in equity; and

(b) It is impossible to ascertain therefrom whether the purported cause of action, or actions, set forth a claim or claims against said defendants and each of them or solely against said corporate defendant.



## V.

That said first amended complaint is uncertain in each of the respects in which it is hereinbefore alleged to be ambiguous.

WHEREFORE, this defendant prays the judgment of this Honorable Court whether this defendant shall be compelled to make further or any answer to said first amended complaint and prays to be hence dismissed with his reasonable costs in this behalf sustained.

Joseph L Lewinson  
L R Martineau Jr  
Attorneys for Defendant, John E.  
Sutherlin.

We, Joseph L. Lewinson and L. R. Martineau, Jr., do hereby certify that we are counsel for said defendant, John E. Sutherlin, in the above-entitled action, and that in our opinion the foregoing demurrer is well founded.

Joseph L Lewinson  
L R Martineau Jr

[TITLE OF COURT AND CAUSE.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER OF JOHN E. SUTHERLIN, TO FIRST AMENDED COMPLAINT.

## I.

The amended complaint does not state facts sufficient to constitute a cause of action against the defendant, John E. Sutherlin:

1. Every private transaction is presumed to be fair, regular and free from fraud, a presumption which approximates in strength that of innocence of crime.

California Code of Civil Procedure, Sec. 1963, par. 19;

Everett v. Standard Accident Ins. Co., 45 Cal. App. 332, 187 Pac. 996;

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2. A demurrer does not admit facts pleaded which appear unfounded by a record incorporated or referred to in the pleading; where the complaint is at variance with material facts set out in the exhibits attached thereto, the latter control.

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Anderson v. Inter-river Drainage Dist., 274 S. W. 448.

3. General charges of fraud are worthless; the facts constituting fraud must be alleged with great particularity and exactitude.

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A. Plaintiff should have alleged definitely the items and amounts which she claimed were omitted from the "set-up" in order that their materiality might be ascertained.

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4. The mere existence of a scheme to defraud is not actionable in the absence of specific fraudulent acts.

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The mere fact that a lawful act is done with a dishonest or fraudulent motive, does not make the act unlawful; motive is immaterial.

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Pigott v. Graham, 93 Pac. 435, 48 Wash. 348, 14 L. R. A. (N. S.) 1176.

A. This is particularly true where the opinions expressed related to plaintiff's ability to do certain things.

Schwitters v. Des Moines Commercial College, 199 Ia. 1058, 203 N. W. 265.

B. It is also particularly true where the opinions expressed related to matter susceptible to the test of simple mathematical computation.

Henry v. Continental Bldg., & Loan Ass'n., 156 Cal. 667, 105 Pac. 960;

Keithley v. Mutual L. Ins. Co., 271 Ill. 584, 111 N. E. 503;

Warren v. Federal L. Ins. Co., 198 Mich. 342, 164 N. W. 449;

Donoho v. Equitable L. Ass. Soc., 22 Tex. Civ. App. 192, 54 S. W. 645.

C. The subject of the alleged misrepresentations being simple matters which anyone could find out for himself upon the slightest investigation, it became the duty of plaintiff to avail herself of the means of informing herself; not having done so, she has only herself to blame.

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Beckley v. Archer, 74 Cal. App. 598, 241 Pac. 422.

6. Even though fraud were alleged, plaintiff by her conduct has waived it.

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A. When plaintiff discovered the alleged fraud, it became her duty, if she intended to go on with the contract, to deal at arm's length with the defendants; instead of that she asked and obtained favors and extensions to which she was not legally entitled; by this conduct she affirmed the contract, and waived the fraud.

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Tucker v. Beneke, 180 Cal. 588, 182 Pac. 299;

Blydenburgh v. Welsh, 3 Fed. Cas. 771; Case No. 1583;

Schagun v. Scott Mfg. Co., 162 Fed. 209,

B. After plaintiff discovered the alleged fraud she made a new contract with respect to the subject matter and thus waived the fraud.

Lee v. McClelland, 120 Cal. 147;

Ruhl v. Mott, 120 Cal. 668.

C. The contract being largely executory at the time of the discovery of the alleged fraud, plaintiff should have taken action at once; by choosing to go on with the contract, she waived the fraud.

Kingman Co. v. Stoddard, 85 Fed. 740;

Simon v. Goodyear Met. Rubber S., Co., 105 Fed. 573;

Bement v. La Dow, 66 Fed. 185.

7. Plaintiff cannot avail herself of the excuse that she did not read the instruments or could not understand the transaction.

Dale v. Dale, 262 Pac. 339;

Uptown v. Tribilcock, 91 U. S. 45, 23 L. Ed. 203;

Chicago Rye Co. v. Belliwith, 83 Fed. 437 (C. C. A. 8th);

Kimmell v. Skelly, 130 Cal. 555.

8. The plaintiff did not rely upon representations alleged relative to the "set-up" because said "set-up" was merged into the loan agreement and trust indenture.

Van Weel v. Winston, 115 U. S. 228, 29 L. Ed. 384;

Andrus v. *Smeltin* Co., 130 U. S. 643, 32 L. Ed. 1054;

Henry v. Bldg., & Loan Ass'n., 156 Cal. 667.



II.

Misjoinder of parties defendant:

Code of Civil Procedure of California, Sec. 430;

*Hurt v. Hollingsworth*, 100 U. W. 100, 25 L. Ed. 569;

*Lindsay v. Shreveport Bank*, 156 U. S., 485, 39 L. Ed. 505;

*Lantry v. Wallace*, 182 U. S. 536, 45 L. Ed. 1218.

III.

Several alleged causes of action are improperly united:

Code of Civil Procedure of California, Sec. 427.

IV.

The demurrer should be sustained without leave to amend:

*Demartini v. Marini*, 45 Cal. App. 418, 187 Pac. 985;

*Goebel v. Gregg*, 57 Cal. App. 651, 207 Pac. 917;

*Reios v. Mardis*, 18 Cal. App. 276, 122 Pac. 1091;

*Loeffler v. Wright*, 13 Cal. App., 224; 232-233;

*San Joaquin, etc., Co. v. County of Stanislaus*. 155 Cal. 21, 29;

*Bell v. Bank of Calif.*, 153 Cal., 234, 244-5;

*Foss v. Peoples Etc., Co.* 89 N. E. 356 (Ill. Sup.)

Respectfully submitted,

Joseph L Lewinson

L R Martineau Jr

Attorneys for Defendant John E. Sutherlin.

[Endorsed]: Received copy of the within Demurrer and Brief this 3 day of May 1929 E. D. Moore, D. A. Knapp & John H. Bradley Attorneys for Plaintiff. Filed May 3, 1929. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE OF MOTION TO STRIKE PLAINTIFF'S  
AMENDED COMPLAINT.

TO GRACE E. LOW, PLAINTIFF, and EWELL D.  
MOORE, ESQ., D. A. KNAPP, ESQ., and JOHN  
H. BRADLEY, ESQ., HER ATTORNEYS:

You and each of you will please take notice that the undersigned, attorneys for defendants, will on the 13th day of May, 1929, at 10:00 o'clock A. M., of said day or as soon thereafter as counsel can be heard at the court room of the above-entitled Court, before Honorable Paul J. McCormick, Judge thereof, move the Court to strike from the files plaintiff's first amended complaint herein, upon the ground that said first amended complaint omits and contradicts the allegations and admissions contained in plaintiff's original complaint and particularly in paragraph XVII thereof, with reference to the income from the property involved in this action and that such amendment cannot properly be made under the leave to amend heretofore granted to plaintiff.

DATED this 3rd day of May, 1929.

Joseph L Lewinson

L R Martineau Jr

Attorneys for Defendants.

[TITLE OF COURT AND CAUSE.]

MEMORANDUM OF AUTHORITIES IN SUPPORT  
OF MOTION TO STRIKE PLAINTIFF'S  
AMENDED COMPLAINT.

Bank of Woodland v. Heron, 122 Cal. 107, 54 Pac.  
537;

Brown v. Aguilar, 202 Cal. 143, 259 Pac. 735.

Joseph L Lewinson  
L R Martineau Jr.  
Attorneys for Defendants.

[Endorsed]: Received copy of the within Notice of  
Motion to Strike and authorities this 3 day of May 1929  
E D Moore D. A. Knapp John H Bradley Attorneys for  
Plaintiff. Filed May 3, 1929 R. S. Zimmerman, Clerk,  
by Edmund L. Smith Deputy Clerk



At a stated term, to wit: The September Term, A. D.  
1929 of the District Court of the United States of  
America, within and for the Central Division of the South-  
ern District of California, held at the Court Room thereof,  
in the City of Los Angeles on Monday the 14th day of  
October in the year of our Lord one thousand nine hun-  
dred and twenty-nine

Present:

The Honorable F. C. Jacobs, District Judge.

Grace E. Low,	Plaintiff,	)	
		)	
	vs.	)	No. 3324-M Civ.
		)	
Sutherlin, Barry & Co., Inc.,	)		
et al.,	Defendants.	)	
		)	

This cause having been heretofore submitted on the  
hearing and briefs filed upon the Demurrer of Sutherlin,

Barry and Company, Inc., and John E. Sutherlin, the Court enters the following order:

The General Demurrer of Sutherlin, Barry & Company, Inc., is sustained.

The General Demurrer of John E. Sutherlin is sustained and this action is dismissed.

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[TITLE OF COURT AND CAUSE.]

### JUDGMENT OF DISMISSAL

This cause came on to be heard at this term upon the demurrers of defendants and each of them to the complaint herein, as amended, and was argued by respective counsel of the parties hereto; and thereupon, after due consideration thereof, the Honorable F. C. Jacobs, District Judge on the 14th day of October, 1929, made an order sustaining the demurrers of Sutherlin, Barry & Company, Inc., and John E. Sutherlin, without leave to amend; and

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the above entitled cause be and the same is dismissed with prejudice at the costs of the plaintiff.

F. C. Jacobs

District Judge.

Approved as to form as provided  
in Rule 44

Joseph L. Lewinson

L R Martineau Jr

Attorneys for Defendants.

Ewell D Moore

D. A. Knapp

John H Bradley

Attorneys for Plaintiff.

Judgment entered and recorded Oct 15 1929

R. S. Zimmerman, Clerk

By Louis J. Somers Deputy Clerk

[Endorsed]: Filed Oct 15 1929 R. S. Zimmerman,  
Clerk By Louis J. Somers Deputy Clerk

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District Court of the United States  
SOUTHERN DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION  
(NOW CENTRAL DIVISION)

Grace E. Low,

Plaintiff,

vs.

Sutherlin Barry & Company,  
Inc., and John E. Sutherlin,  
Defendants.

} No. 3324 M Civil

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original Judgment entered in the above-entitled cause and recorded in Judgment Book 5, Central Division, at page 36 thereof; and I do further certify that the papers hereto annexed constitute the Judgment Roll in said cause.

ATTEST my hand and the seal of said District Court,  
this 4th day of November A. D. 1929.

R. S. ZIMMERMAN,

Clerk.

By Louis J. Somers

(SEAL)

Deputy Clerk.



[TITLE OF COURT AND CAUSE.]

## PETITION FOR APPEAL

To the HONORABLE, F. C. JACOBS, District Judge:

The above-named plaintiff, feeling aggrieved by the judgment of dismissal entered on the 15th day of October 1929, in the above-entitled cause, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and plaintiff prays that her appeal be allowed and that a Citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California, under the rules of such court in such cases made and provided;

And your petitioner prays that the proper order relating to the security to be required of her be made.

Dated: December 30, 1929

Grace E. Low

Petitioner.

D. A. Knapp

Ewell D. Moore

Attorneys for Petitioner.

Appeal allowed upon giving bond as required by law for the sum of (350-) Dollars.

Wm P. James

JUDGE,

I am signing this in the place of Judge Jacobs who heard the matter and who has returned to Arizona.

[Endorsed]: Filed Jan 9 - 1930 R. S. Zimmerman,  
Clerk By M. L. Gaines Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

### ASSIGNMENT OF ERRORS.

Comes now the plaintiff in the above-entitled action and files the following Assignment of Errors upon which she will rely upon her prosecution of the appeal in the above-entitled cause, from the judgment made by this Honorable Court on the 14th day of October 1929, and entered by the Clerk of the above-entitled court on the 15th day of October 1929, at Los Angeles, California.

#### I.

That the United States District Court for the Southern District of California, Central Division, erred in sustaining the demurrers of defendants, Sutherlin Barry & Company, Inc., and John E. Sutherlin, to plaintiff's first amended complaint and in the judgment of dismissal of plaintiff's action herein.

WHEREFORE, plaintiff prays that said judgment be reversed and that said District Court for the Southern District of California, Central Division, be ordered to enter a judgment reversing the decision of the lower court in said cause.

Dated December 30, 1929.

D. A. Knapp

Ewell D. Moore

Attorneys for Plaintiff.

[Endorsed]: Filed Jan 9- 1930 R. S. Zimmerman,  
Clerk By M. L. Gaines Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION

It is hereby stipulated and agreed by the respective parties hereto by and through their respective counsel that the following items may be omitted from the record on appeal, to-wit: Item No. 4—Motion to transfer cause to Equity Docket; Item No. 5, Plaintiff’s brief on motion to transfer and counter-affidavit, and Item No. 6, Defendants’ reply brief thereto; and that the clerk of the above entitled court be and he is hereby instructed to omit said items from said record.

It is further stipulated and agreed by the parties hereto that by way of amplification of the matters mentioned in the affidavit of L. R. Martineau, Jr. executed on the 21st day of March, 1929, and filed as a part of the records and files of the above entitled cause, and in order to simplify the record on appeal in this cause and to avoid the necessity of setting out in extenso the pleadings in the actions referred to in said affidavit, the following may be accepted by the court as a statement of the substance of the issues presented in said actions and of the disposition made of each of said suits (with the exception of this cause now pending on appeal—No. 3324-M):

—A—

GRACE E. LOW,	)	
	(	
Plaintiff,	)	
	(	
vs.	)	No. 2835-J
	(	
SUTHERLIN BARRY & COM-	)	
PANY, INC. AND JOHN E.	(	
SUTHERLIN,	)	
Defendants.	(	

This action was originally filed on or about April 29, 1927, in the Superior Court of the State of California, in and for the County of Los Angeles, under Docket No.

222843, and was removed by the defendants to the United States District Court for the Southern District of California, Southern Division.

The original complaint alleged that plaintiff was the owner of the same two parcels of real estate which are involved in this action now pending on appeal (No. 3324-M), namely, the "Engstrum Property" in Los Angeles, California, and the "United States Island" property in Venice, California; that on June 29, 1925, plaintiff and defendants made and executed the same agreement which appears as Exhibit "C" attached to plaintiff's original complaint in this action (No. 3324-M); that the transaction represented by said agreement was placed in escrow with Citizens Trust & Savings Bank of Los Angeles, California, and that plaintiff went forward under the terms of said agreement incurring various expenses incidental thereto, but that before the loan could be closed the defendants threatened to withdraw from the transaction unless plaintiff would pay an additional sum of Fifty-nine Hundred Dollars (\$5900.00); that plaintiff accordingly executed two promissory notes each in the sum of Twenty-nine Hundred Fifty Dollars (\$2950.00); that defendants negotiated one of said notes and the holder brought suit for its collection and garnisheed plaintiff's tenants, annoying and harrassing them and causing them to vacate their apartments; that on April 5, 1926, at the request of the defendants, the trustee issued a declaration of default and served notice that the property would be sold under the powers contained in the trust deed on May 25, 1926; that the sale was postponed until June 1, 1926, and again until June 8, 1926, and that in the meantime, to-wit, on June 4, 1926, plaintiff and defendants entered into the same agree-

ment which appears as Exhibit "E" attached to plaintiff's complaint in this action now pending on appeal (No. 3324-M); that pursuant to the agreement of June 4, 1926, the trustee's sale was postponed to August 12, 1926, at 10 o'clock A. M.; that at or immediately prior to said time, plaintiff produced one Rodolfo Montes who expressed his ability and willingness to pay up all arrearages and defaults in said matter as soon as the banks should open on said day, but that notwithstanding said assurance, the trustee, at defendants' insistence, proceeded with the sale and sold to the defendants for the sum of \$292,500.00 the property which was reasonably worth \$666,725.00, thus depriving plaintiff of her property; that upon taking possession of said real property the defendants also took possession and converted to their own use the furnishings and fixtures thereof of the value of \$50,000.00; and that the defendants had been operating the property since May 1, 1926, without accounting to plaintiff for the income received.

The complaint prayed for judgment that the title to the property be quieted in plaintiff, that the bond issue be declared illegal and void, that plaintiff recover damages in the sum of \$500,000.00, that defendants be required to account for the income of the property and for further relief.

The complaint was amended and defendants interposed demurrers to the amended complaint which were sustained by the court with leave to amend; thereafter, plaintiff filed a second amended complaint in said action praying judgment for Five Hundred Thousand Dollars (\$500,000.00) damages for the loss of the real property and Fifty Thousand Dollars (\$50,000.00) for the conversion of the fur-



nishings and fixtures; that defendants be required to account and for further relief. Defendants interposed demurrers to said second amended complaint and on the day of the hearing on said demurrers said action was dismissed on plaintiff's motion, and on the same day the above entitled action now pending on appeal (No. 3324-M) was filed by plaintiff.

—B—

GRACE E. LOW,	)	
	(	
Plaintiff,	)	
	(	
vs.	)	No. M-83-J
	(	
SUTHERLIN BARRY & COM-	)	
PANY, INC., ASBURY COR-	(	
PORATION, CITIZENS TRUST	)	
& SAVINGS BANK, JOHN E.	(	
SUTHERLIN, ET AL.,	)	
Defendants.	(	

This case was filed on or about June 10, 1927, in the Superior Court of the State of California, in and for the County of Los Angeles, under Docket No. 226032, and was removed on petition of defendants to the United States District Court for the Southern District of California, Southern Division.

The complaint alleged that plaintiff was the owner of the Engstrum property, being one of the two parcels of real estate involved in this action now pending on appeal (No. 3324-M); that the defendants, John E. Sutherlin and Sutherlin Barry & Company, formed a "scheme and design" to acquire said property without just compensation and that all of the acts of said defendants referred to in the complaint were performed in pursuance of said "scheme and design"; that on June 29, 1925, plaintiff

and the defendant, Sutherlin Barry & Company, made and executed the same agreement which appears as Exhibit "C" attached to plaintiff's original complaint in this action (No. 3324-M); that the transaction represented by said agreement was placed in escrow with the defendant, Citizens Trust & Savings Bank of Los Angeles, California, and that plaintiff went forward under the terms of said agreement incurring various expenses incidental thereto, but that before the loan could be closed, the defendants threatened to withdraw from the transaction unless plaintiff would pay an additional sum of \$5900.00; that plaintiff accordingly executed two promissory notes each in the sum of \$2950.00; that the defendants negotiated one of said notes and the holder brought suit for its collection and garnisheed plaintiff's tenants, annoying and harrassing them and causing them to vacate their apartments; that said \$5900.00 so exacted was in reality an additional bonus and was in violation of the permit obtained from the Commissioner of Corporations of the State of California for the sale of said securities; that on April 5, 1926, at the request of the defendants, the trustee issued a declaration of default and served notice that the property would be sold under the powers contained in the trust deed on May 25, 1926; that the sale was postponed until June 1, 1926, and again until June 8, 1926, and that in the meantime, to-wit, on June 4, 1926, plaintiff and the defendant Sutherlin Barry & Company, entered into the same agreement which appears as Exhibit "E" attached to plaintiff's complaint in this action now pending on appeal (No. 3324-M); that pursuant to the agreement of June 4, 1926, the trustee's sale was postponed until August 12, 1926, at 10 o'clock A. M.; that at or immediately prior to said time plaintiff produced one Rodolfo Montes who expressed his

ability and willingness to pay up all arrearages and defaults in said matter as soon as the banks should open on said day, but that notwithstanding said assurance, the trustee, at defendants' insistence, proceeded with the sale and sold to the defendants for the sum of \$292,500.00 the property which was reasonably worth \$666,725.00; that upon the consummation of said sale the trustee conveyed said property by deed to the defendant, Sutherlin Barry & Company, who later conveyed the same to the defendant, Asbury Corporation; that the defendant, Asbury Corporation, acquired said property with full knowledge of all of the facts and that the trustee's sale was fraudulent and void; that said transaction was usurious and that the trust indenture and bonds were void as to the interest provisions therein contained; that the bond issue was void by reason of the exaction of interest in violation of the permit of the Corporation Commissioner and that each of the defendants claimed an interest in the property adverse to that of plaintiff.

The complaint prayed for judgment that the sale be set aside, that the interest agreement be declared illegal and void, that the trust indenture and bond issue be declared void under the Corporate Securities Act of the State of California, that the defendants be required to set forth the nature of their claims in and to the real property and that plaintiff's title be quieted as against the defendants, and each of them.

The defendants interposed a motion to dismiss said complaint for want of equity, misjoinder and uncertainty; said motion was granted on June 4, 1928, by the Hon. William P. James, Judge of said Court, without leave to amend, and said cause was dismissed with prejudice on the 3rd day of July, 1928.

—C—

GRACE E. LOW,	)	
	(	
Plaintiff,	)	
	(	
vs.	)	
	(	
SUTHERLIN BARRY & COM-	)	
PANY, INC., LOS ANGELES	(	
TRUST & SAFE DEPOSIT CO.,	)	
PACIFIC SOUTH-WEST TRUST	(	No. M-84-J
& SAVINGS BANK, JOHN E.	)	
SUTHERLIN, GEORGE ACRET	(	
AND ANASTASIA ACRET, ET	)	
AL.,	(	
Defendants.	)	

This case was filed on or about June 23, 1927, in the Superior Court of the State of California, in and for the County of Los Angeles, under Docket No. 227222, and was removed on petition of defendants to the United States District Court for the Southern District of California, Southern Division.

The complaint in this case was substantially similar to the complaint last above-mentioned, the only material difference being that this case involved the "U. S. Island" property, whereas case M-83-J involved the "Engstrum" property.

The prayer of this complaint was likewise very similar to the prayer of the complaint in the case last above-mentioned, except as to the property involved.

The defendants interposed motions to dismiss similar to those interposed by them in case No. M-83-J, and the same disposition was made of this case which was likewise dismissed with prejudice by order of the Hon. William P. James on the 3rd day of July, 1928.

—D—

GRACE E. LOW,	)	
	(	
	)	
Plaintiff,	)	
	(	No. 2814-H
vs.	)	
	(	
SUTHERLIN BARRY & COM-	)	
PANY, INC.,	)	
	(	
Defendant.	)	

This case which was an action for usury was filed in the District Court of the United States in and for the Southern District of California, Southern Division, on July 26, 1927.

The complaint alleged that on June 29, 1925, plaintiff and the defendant, Sutherlin Barry & Company, made and executed the same agreement which appears as Exhibit "C" attached to plaintiff's complaint in this action (No. 3324-M); that the transaction represented by said agreement was placed in escrow with Citizens Trust & Savings Bank of Los Angeles, California, and that plaintiff went forward under the terms of said agreement incurring various expenses incidental thereto, but that before the loan could be closed, the defendants threatened to withdraw from the transaction unless plaintiff would pay an additional sum of \$5900.00; that plaintiff accordingly executed two promissory notes each in the sum of \$2950.00; that one of said notes had been paid in full but that the other had never been paid; that on April 5, 1926, at the request of the defendants, the trustee issued a declaration of default and served notice that the property would be sold under the powers contained in the trust deed on May 12, 1926, on which last mentioned date the trustee sold the trust property to the defendant, Sutherlin Barry & Company, for \$292,500.00, which sum was applied first to costs



25, 1926; that the sale was postponed until June 1, 1926, and again until June 8, 1926, and still again until August and attorneys fees, second to payment of interest, and the balance to apply on unpaid principal; that by reason of the 10% discount in the sale price of the bonds, and by reason of the exaction of said \$5900.00, and by reason of the operation of the acceleration clause in the trust deed, said transaction was usurious; that the defendant exacted a total of \$55,000.00 by way of interest.

The prayer of the complaint was that said interest payment of \$55,000.00 should be trebled and that plaintiff might have judgment for the sum of \$165,000.00.

The complaint was twice amended; a demurrer was interposed on behalf of the defendant which was sustained by the Hon. William P. James, Judge of the above entitled Court, without leave to amend, and the case was accordingly dismissed on December 19, 1928.

From the order sustaining the demurrer and dismissing the case, plaintiff prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, which last named Court rendered its decision adverse to plaintiff on the 21st day of October 1929. (35 Fed. (2d) 443).

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It is further stipulated that this stipulation shall be included in the transcript on appeal.

This stipulation is made without prejudice to the rights of plaintiff to object to the relevancy of any or all of the facts and matters herein set out.

Dated this 6th day of February, 1930.

Ewell D Moore

D A Knapp

Attorneys for Plaintiff.

Joseph L Lewinson

L R Martineau Jr

Attorneys for Defendants.

[Endorsed]: Filed Feb. 7, 1930. R. S. Zimmerman,  
Clerk by Edmund L. Smith, Deputy Clerk.

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[TITLE OF COURT AND CAUSE.]

#### UNDERTAKING ON APPEAL

WHEREAS, the Plaintiff in the above-entitled action is about to appeal to the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California from an order entered against her in said action, in said United States District Court, Southern District of California, Central Division, in favor of the defendants in said action, on the 15th day of October 1929, sustaining the demurrers of defendants to plaintiff's first amended complaint, and judgment of dismissal of plaintiff's action herein;

NOW, THEREFORE, in consideration of the premises and of such appeal, the undersigned, NATIONAL SURETY COMPANY, a corporation organized and existing under the laws of the State of New York, and duly authorized to transact a general surety business in the State of California, does hereby undertake and promise on the part of the Appellant that said Appellant will pay all damages and costs which may be awarded against her on the appeal, or on a dismissal thereof, not exceeding

Three Hundred and Fifty (\$350.00) Dollars, to which amount it acknowledges itself bound.

IN WITNESS WHEREOF, the said surety has caused these presents to be executed and its official seal attached by its duly authorized Attorney-in-Fact, at Los Angeles California, the 23rd day of January, 1930.

NATIONAL SURETY COMPANY,

By J. PAUL KIEFER

Attorney in Fact [Seal]

Examined and recommended for approval as provided in Rule 28.

EWELL D. MOORE

Attorney.

I hereby approve the foregoing bond.

Dated the 23d day of January, 1930.

Wm P James

Judge.

STATE OF CALIFORNIA )  
COUNTY Los Angeles ( ss:

On this 23rd day of January, in the year 1930, before me, Frances T. Mixson, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn personally appeared J. Paul Kiefer, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the NATIONAL SURETY COMPANY, a Corporation, and acknowledged to me that he subscribed the name of the NATIONAL SURETY COMPANY thereto as Principal and his own name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

FRANCES T. MIXSON

Notary Public in and for said County and State.

[Seal] My Commission Expires August 31, 1932

[Endorsed]: Filed Jan 23 1930 R. S. Zimmerman,  
Clerk By M. L. Gaines Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

STIPULATION FOR DIMINUTION OF RECORD  
ON APPEAL

For the purpose of reducing the record on appeal in the within cause, No. 3324-M filed in the District Court of the United States for the Southern District of California, Central Division, entitled Grace E. Low plaintiff, vs. Sutherlin Barry & Company, Inc. and John E. Sutherlin defendants, it is hereby stipulated by and between the counsel for the respective parties as follows:

1. That the Clerk of the above-entitled court be, and he is hereby requested to ignore the praecipis filed heretofore by counsel for the respective parties, specifying the documents to be included in the record on appeal, and, in lieu of said praecipis, that there shall be included in said record the following documents and papers:

- (a) Original Complaint.
- (b) Demurrers to the original complaint.
- (c) Order of Court sustaining the demurrers to original complaint.
- (d) Stipulation of counsel that the exhibits attached to original complaint need not be attached to first amended complaint.
- (e) First amended complaint.
- (f) Demurrers to first amended complaint.
- (g) Motion of defendants to strike first amended complaint.
- (h) Minute order of Court sustaining general demurrers and dismissing the action.
- (i) Judgment of dismissal.
- (j) Petition for appeal.
- (k) Order allowing appeal.

- (l) The citation.
- (m) The bond on appeal.
- (n) Original summons and return of service.
- (o) The Clerk's certificate to judgment and judgment roll.
- (p) Assignment of errors.
- (q) Affidavit of L. R. Martineau, Jr. dated March 21, 1929.
- (r) Affidavit of Ewell D. Moore contra to Mr. Martineau's affidavit of March 21, 1929.
- (s) Stipulation of counsel for the parties dated February 6, 1930.

2. That all headings on the various documents, except the original complaint, included in the record on appeal, may be omitted, with the exception of the words "Title of Court and Cause," and the descriptive title of such documents.

3. That all of the type-written or printed matter on the backs of the various documents included in the said record on appeal, may be omitted, except the filing marks thereon.

4. That this stipulation shall be included in the record on appeal.

Dated April 1, 1930.

Ewell D. Moore

D. A. Knapp

Attorneys for Plaintiff.

L. R. Martineau Jr

Joseph L. Lewinson

Attorneys for Defendants.

[Endorsed]: Filed Apr. 4, 1930. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk



[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 174 pages, numbered from 1 to 174 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; summons and return thereon; demurrers; affidavit of L. R. Martineau, Jr.; counter affidavit of Ewell D. Moore; minute order sustaining demurrer; first amended complaint; stipulation regarding exhibits; demurrers; notice of motion to strike; judgment of dismissal; clerk's certificate to judgment roll; petition for appeal; order allowing appeal; assignment of errors; stipulation; undertaking on appeal, and stipulation regarding record on appeal.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$                    and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty, and of our Independence the One Hundred and Fifty-fourth.

R. S. ZIMMERMAN,  
Clerk of the District Court of the  
United States of America, in and  
for the Southern District of  
California.

By

Deputy.